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NOTATION

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11- 8-71	Filed MARSHAL'S RETURN ON SUMMONS executed 10-26-71 by serving Hon. Bob Bullock, Sec. of State, by delivering to Julie Joslin, Agent.
11- 8-71	Filed Plaintiffs' Notice to take the deposition of Ben Barnes, Lieutenant Governor, at 9:30 a.m., Dec. 2, 1971, in Austin, Texas.
11- 9-71	Filed Plaintiffs' Notice to take the deposition of Ben Barnes at 9:30 a.m., Dec. 2, 1971, in Austin, Tex. (With Certificate of Service).
11- 9-71	Filed Plaintiffs' Notice to take deposition of G. F. Mutscher, Speaker of the House of Representatives, at 1:30 p.m., Dec. 2, 1971, in Austin, Texas.
11- 9-71	Filed Plaintiffs' Notice to take deposition of Greg Hooser on the 3rd day of Dec., 1971, at 9:30 a.m. in Austin, Texas.
11- 9-71	Filed Plaintiffs' Notice to take the deposition of Carl Robin Teague at 2:00 p.m., Dec. 3, 1971, in San Antonio, Texas.
11-18-71	Filed MARSHAL'S RETURN ON DEPOSITION SUBPOENA executed 11-15-71 by serving Carl Robin Teague.
12-15-71	Mailed copy of docket sheet and all pleadings with transmittal letter to Judge Ingraham.
10-19-71	Filed COMPLAINT including request for three-judge court and issued SUMMONS (1).
11-15-71	Filed DEFENDANT'S COMPLAINT (ANSWER).
11-24-71	Filed Defendant's DEMAND FOR JURY TRIAL.
11-23-71	Filed Judge John R. Brown's Order designating Circuit Judge Irving L. Goldberg and District Judge W. M. Taylor, Jr. to serve with Judge Hill.
12- 5-71	Filed PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS JURY DEMAND.
12-14-71	Filed Judge John R. Brown's Order reconstituting 3-Judge Court, as follows: Circuit Jude Joe Ingraham, District Judge W. M. Taylor, Jr. and Judge Robert M. Hill.
1- 6-72	Filed PLAINTIFFS' AMENDED COMPLAINT. (Copies to the 3 Judges).
1-12-72	Filed CERTIFICATE OF SERVICE as to Amended Complaint.
1-14-72	Filed PLAINTIFFS' BRIEF with APPENDIX.
1-14-72	Filed DEPOSITION OF REP. DELWIN L. JONES.
1-14-72	Filed ORAL DEPOSITION OF BEN BARNES.
1-14-72	Filed ORAL DEPOSITION OF GREGORY DREW HOOSER.
1-14-72	Filed ORAL DEPOSITION OF CARL ROBIN TEAGUE.
1-19-72	Filed STIPULATIONS re Clyde Haynes and Charles Wilson.
1-19-72	Filed AFFIDAVIT OF John T. Potter.
1-20-72	Filed MOTION TO INTERVENE AS PLAINTIFF of M. O. Turner, Mrs. Lois White, Richardson B. Gill, Mrs. Mary Louise Pino and Mrs. Mary Martin Jackson.
1-21-72	Filed DEPOSITION OF ZAN WESLEY HOLMES.
1-21-72	Filed DEPOSITION of Oscar H. Mauzy.
1-21-72	Filed OPINION AND ORDER. This Court holds that S.B. 1 is unconstitutional; defendant is enjoined from conducting or permitting any primary of general elections based upon the districts established by S.B. 1. Leave to intervene is granted to Van Henry Archer, Jr., individually and as Chairman of the Bexar County Republican Party, to the extent stated by the attorney for intervenors in open court. Plan C is adopted and declared to be in effect and operative. Maintenance of this cause as a class action is denied. This judgment is considered, for purposes of appeal and otherwise, as a final judgment in this case, and no stay of proceedings pending appeal will be granted. Copies mailed to the Governor, Lt. Governor, Speaker of the

	House of Representatives, Secretary of State and Attorney General of the State of Texas. Copies given to all attorneys of record.
1-22-72	Filed COMPLAINT IN INTERVENTION, with exhibits.
1-24-72	Filed PRE-TRIAL ORDER. (Signed 1-21-72). Copies mailed to counsel.
1-25-72	Filed ORDER amending Opinion and Order of Jan. 22. 1972. to rectify clerical errors as to Congressional Districts 10 and 24. Copies mailed to the Governor, Lt. Governor, Speaker of the House of Representatives Secretary of State and Attorney General of the State of Texas and to all attorneys of record.
3-21-72	Filed NOTICE OF APPEAL TO THE SUPREME COURT OF U.S. By Bob Bullock, Sec. of State of Texas.
3-21-72	Filed DESIGNATION AND CERTIFICATION OF RECORD.

APPENDIX

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. 71-1623

BOB BULLOCK, *etc.*,

Appellant

vs.

DAN WEISER, *et al.*,

Appellees

Appeal from the United States District Court
for the Northern District of Texas

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DAN WEISER, DONALD COLEMAN,
JOHN L. EDWARDS, HUGH ELLIOTT,
JOHN W. FLETCHER, JOHN R. KARR,
JOYCE V. KARR, BENJAMIN NEWCOMB,
NORMA PALMER, MARVIN ZIMET,
Plaintiffs

No. CA-3-5202-A

VS.

HONORABLE BOB BULLOCK,
SECRETARY OF STATE OF
THE STATE OF TEXAS,
Defendant

COMPLAINT
[filed, October 18, 1971]

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME DAN WEISER and the other individuals named as Plaintiffs above, on behalf of themselves and others similarly situated comprising the class hereinafter defined, and complaining of the Honorable Bob Bullock in his capacity as Secretary of State of the State of Texas, hereinafter called Defendant, would for cause of action respectfully show:

I.
PARTIES — CLASS ACTION

Plaintiffs:

Plaintiff—Residence	Congressional District Per S.B. 1
DAN WEISER 3851 Rugged Circle Dallas, Texas	6th

DONALD COLEMAN 2412 Thirteenth Street Lubbock, Texas	19th
JOHN L. EDWARDS 1930 Dancliff Dallas, Texas	6th
HUGH ELLIOTT 3515 Cranbrook Wichita Falls, Texas	13th
JOHN FLETCHER 2701 22nd, No. 3 Lubbock, Texas	19th
JOHN R. KARR 520 Prospect El Paso, Texas	16th
JOYCE V. KARR 520 Prospect El Paso, Texas	16th
BENJAMIN NEWCOMBE 3905 B 21st Street Lubbock, Texas	19th
NORMA PALMER 206 Mary Drive Iowa Park, Texas	13th
MARVIN ZIMET 6200 Pinehurst El Paso, Texas	16th

All Plaintiffs are qualified and duly registered to vote in elections for the United States House of Representatives in their respective districts.

Class Action:

Plaintiffs sue on behalf of themselves and all other qualified voters, registered and unregistered, within the several districts wherein the respective Plaintiffs

reside as well as all other qualified voters in all other congressional districts in the State of Texas.

That the number of persons comprising the class so defined is so numerous as to make it impossible to bring them before the Court. That Plaintiffs, as qualified and registered voters, are fairly representative of the class as defined.

That by virtue of the foregoing, this action is properly brought by these Plaintiffs as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

Defendant:

The Defendant Bob Bullock is the duly qualified and acting Secretary of State of the State of Texas. That by the provisions of Article 1.03 of the Texas Election Code (Acts, 60th Leg., Ch. 723, p. 1860 §3, 1967) he is, by virtue of his office, the chief election officer of the State of Texas and is charged with the duty, *inter alia*, of " . . . obtain[ing] and maintain[ing] uniformity in the application, operation and interpretation of the election laws." Said Defendant may be served at his offices in the State Capitol Building in Austin, Texas.

That pursuant to the provisions of 28 U.S.C. §2284, Notice of hearings in this suit must be given to the Honorable Preston Smith, Governor of the State of Texas at his office or official residence in Austin, Texas, and to the Honorable Crawford Martin, Attorney General of the State of Texas at his office in Austin, Texas.

II.
JURISDICTION

Plaintiffs, on behalf of themselves and others simi-

larly situated, sue to have the Texas statute establishing congressional districts for the State of Texas (S.B.1, Acts 62nd Leg., 1971) declared violative of Article I §2 of the Federal Constitution and of the XIVth Amendment, §§ 1 & 2 to the Federal Constitution, and to enjoin its enforcement and the conduct of elections thereunder. Thus, this Court has jurisdiction, sitting as a three-judge Court under Title 28 of the U. S. Code, §1343 and §2281.

III.

CAUSE OF ACTION UNDER ARTICLE I §2

A. That under ARTICLE I §2, Cl. 3 of the Federal Constitution, as a result of the 1970 decennial federal census, the State of Texas was apportioned twenty-four members of the United States House of Representatives.

B. That the 62nd Legislature of the State of Texas enacted S.B.1 appended hereto as Exhibit A and herewith incorporated by reference for all purposes as though set forth at length herein. That said statute divides the State into twenty-four congressional districts and provides that one member of the House of Representatives shall be elected from each district.

C. That said statute provides that it will become effective for the general election in 1972, and, by implication, for the primary elections to be held by the Democratic and Republican parties of Texas prior thereto pursuant to Article 13.02 of the Texas Election Code (Acts 52nd Leg., Ch. 492, p. 1097, Art. 180, 1951).

D. That Article I, §2 of the Federal Constitution requires that such congressional districts be as compact, contiguous and as nearly equal in population as is practicable so that the vote cast by each voter will be equal in weight to the vote of every other voter.

E. That the congressional districts established by S.B.1 are not as compact, contiguous and as nearly equal in population as is practicable, and therefore said statute violates on its face Article I §2 of the Federal Constitution. Thus, Plaintiffs, and others similarly situated are deprived of their Constitutional right to have their vote count for as much as every other voter.

F. In support of the foregoing, Plaintiffs show:

(1) that the population of the State of Texas, according to the 1970 federal census, was eleven million, one hundred ninety-six thousand, seven hundred and thirty (11,196,730) persons;

(2) that mathematically, each congressional district should contain four hundred sixty-six thousand, five hundred and thirty (466,530) persons;

(3) that the district containing the largest population according to the census is the Thirteenth (13th) District, which contains four hundred seventy-seven thousand, eight hundred and fifty-six (477,856) persons, or eleven thousand, three hundred and twenty-six (11,326) persons more than a numerically equal district;

(4) that the district containing the smallest population according to the census is the Fifteenth (15th) District, which contains four hundred fifty-eight thousand, five hundred and eighty-one (458,581) persons, or seven thousand, nine hundred and forty-nine (7,949) persons less than a numerically equal district;

(5) that expressed in percentages, the population of the Thirteenth (13th) District is 2.4% greater than a numerically equal district; and the population

of the Fifteenth (15th) District is 1.7% less than a numerically equal district;

(6) that the population of the largest district is greater than the smallest district by nineteen thousand, two hundred and seventy-five persons; or, expressed in percentages, 4.1% greater;

(7) that the vote of a voter in the Thirteenth (13th) District is worth only 96% of the vote of a voter in the Fifteenth (15th) District;

(8) that the population of each district established by S.B.1, according to the federal decennial census, together with its deviation from the mathematically equal district, expressed numerically and in percentages, is shown by the following table, viz.

District	Population	Differences (+ or −)	% Difference
1	461,879	−4651	1.00
2	466,836	+306	.01
3	465,221	−1309	.28
4	463,142	−3388	.73
5	465,093	−1437	.31
6	467,913	+1383	.30
7	461,704	−4826	1.03
8	461,216	−5314	1.14
9	467,483	+953	.20
10	465,493	−1037	.22
11	468,148	+1618	.35
12	465,671	−859	.18
13	477,856	+11,326	2.43
14	467,839	+1309	.28
15	458,581	−7949	1.70
16	477,614	+11,084	2.38
17	467,912	+1382	.30
18	462,062	−4468	.96

19	477,459	+10,929	2.34
20	467,942	+1412	.30
21	466,656	+126	.03
22	461,448	−5082	1.09
23	466,248	−282	.06
24	465,314	−1216	.26

G. That the districts created by S.B.1 were created as a result of political expediency, to perpetuate in office those Representatives whose political philosophy coincided with that of the dominant forces in the State legislature, to create "safe seats" for those of a like mind, to provide a political denouement for past political favors or grievances, to neutralize the votes of ethnic or economic blocs, and with only minimal regard to the constitutional mandate of "one man, one vote."

H. That the legislature desired to enact a statute consonant with the mandate of Article I §2 of the Federal Constitution, it could have drawn twenty-four districts having almost the same geographic boundaries whereby the population difference between the largest and smallest is only six hundred ninety-six (696) persons, or .1 percent (0.001). Such a plan is annexed hereto as Exhibit B, and herewith incorporated by reference for all purposes as thought set forth at length herein.

I. That under S.B.1, the Eighteenth (18th) District purporting to encompass the central portion of Houston, in Harris County, duplicates census tract number 121, containing three thousand, seven hundred nineteen (3,719) persons and wholly omits census tract number 122 containing four thousand, six hundred twenty-seven (4,627) persons. That the effect of such omission is to wholly disenfranchise in congressional elections the otherwise qualified voters residing in

said census tract and to understate the population of said district by nine hundred and eight (908) persons. That such error is not made in the plan advocated by Plaintiffs contained in Exhibit B.

J. That under S.B.1, the Twenty-Second (22nd) District purporting to encompass the south and southeast portion of Harris County (Houston), duplicates census tract number 334 containing five thousand, five hundred fifty-nine (5,559) persons and wholly omits census tract number 344 containing one thousand, seven hundred and six (1,706) persons,. That the effect of such omission is to wholly disenfranchise in congressional elections the otherwise qualified voters residing in said census tract and to overstate the population of said district by three thousand eight hundred and fifty-three (3,853) persons. That such error is not made in the plan advocated by Plaintiffs contained in Exhibit B.

K. That the population of each district under Plaintiffs' plan, according to the federal decennial census, together with its deviation from the mathematically equal district, expressed numerically, is shown by the following table, viz.

District	Population	Differences (+ or −)
1	466,545	+ 15
2	466,565	+ 35
3	466,266	−264
4	466,234	−296
5	466,620	+ 90
6	466,285	−245
7	466,336	−194
8	466,704	+174
9	466,678	+148
10	466,313	−217

11	466,258	−272
12	466,930	+400
13	466,663	+133
14	466,437	− 93
15	466,359	−171
16	466,663	+133
17	466,432	− 98
18	466,520	− 10
19	466,649	+119
20	466,514	− 16
21	466,753	+223
22	466,707	+177
23	466,424	−106
24	466,875	+345

Percentage deviation is so small as to be of no significance, and is therefore omitted.

IV.

CAUSE OF ACTION UNDER XIVTH AMENDMENT

Plaintiffs adopt by reference the allegiations of Paragraph III hereof.

Plaintiffs further allege:

A. That it constitutes an invidious discrimination in favor of those residents of less populous districts over those residents of more populous districts;

B. that the plan embodied therein is wholly arbitrary and irrational when measured by constitutional requirements of equality.

That for these reasons S.B.1 denies Plaintiffs and those similarly situated equal protection of the law, which denial is forbidden by §1 of the XIVth Amendment to the Federal Constitution.

V.

RELIEF

WHEREFORE, Plaintiffs pray:

1. That Defendant be cited to appear and answer herein.

2. That the Court enter an Order pursuant to Rule 23, F.R.C.P. adjudging this suit to be a class action on behalf of all qualified voters in the State of Texas.

3. That a three-judge Court be convened pursuant to 28 U.S.C.A. §2284.

4. That a preliminary injunction issue restraining and enjoining the Defendant from conducting or causing to be conducted any general or primary elections to fill congressional seats based upon the districts established in the said statute.

5. That upon final hearing said statute be adjudged and declared unconstitutional and therefore void.

6. That upon final hearing a permanent injunction issue upon the same terms as the preliminary injunction.

7. That appropriate orders issue upon final hearing directing the legislature of the State of Texas to enact a law creating congressional districts which meet the requirements of the Federal Constitution.

8. That if the legislature fails to enact a law creating congressional districts which meet the requirements of the Federal Constitution, the plan promulgated by Plaintiffs be adopted as the judgment of the Court and appropriate orders issued to require that all congressional elections be conducted thereunder until a constitutionally acceptable law is enacted.

9. In the alternative, if the legislature fails to enact a law creating congressional districts which meet the requirements of the Federal Constitution, that the Court enter appropriate orders to require that all congressional seats apportioned to the State of Texas be filled by at-large elections.

10. That all costs be adjudged against the Defendant; and that the Court retain jurisdiction to render such further order as may seem appropriate.

Respectfully submitted,
FISCHMAN, ROSENBERG, KASMIR & PRESTON
601 Kirby Building
1509 Main Street
Dallas, Texas 75201
744-5511
By: s/Lawrence Fischman
By: s/David H. Rosenberg

EXHIBIT A

S. B. No. 1

AN ACT

relating to reapportionment of congressional districts; repealing Chapter 342, Acts of the 60th Legislature, Regular Session, 1967 (Article 197c, Vernon's Texas Civil Statutes); and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. The State of Texas is apportioned into Congressional Districts as provided in the following sections. Each district is entitled to elect one Member to the House of Representatives of the Congress of the United States.

Sec. 2. District 1 is composed of Bowie, Camp, Cass, Cherokee, Delta, Fannin, Franklin, Harrison, Henderson, Hopkins, Lamar, Marion, Morris, Panola, Red River, Rusk, San Augustine, Shelby, Titus, Upshur, and Wood Counties.

Sect. 3. District 2 is composed of Anderson, Angelina, Freestone, Grimes, Hardin, Houston, Jasper, Leon, Liberty, Madison, Montgomery Nacogdoches, Newton, Orange, Polk, Sabine, San Jacinto, Trinity, Tyler, and Walker Counties.

Sec. 4. District 3 is composed of that part of Dallas County included in census tracts 192.05, 192.06, 192.07, 192.04, 192.03, 192.02, 192.01, 191, 190.02, 190.03, 185.02, 130.02, 130.01, 78.03, 78.02, 136.02, 136.03, 132, 133, 131,

78.01, 76.04, 77, 136.01, 96.04, 134.02, 76.03, 75.02, 137.04, 137.05, 138.01, 96.03, 96.02, 134.01, 135, 76.01, 76.02, 75.01, 74, 73.01, 73.02, 71.02, 4.03, 95, 94, 98, 97, 96.01, 138.02, 137.01, 137.02, 139, 140.01, 72, 6.01, 4.02, 4.01, 6.02, 5, 19, 100, 99, 137.03, 140.02, 142, 148, 147, 146, 145, 152, 149, 150, 151, 198, 143, 101, 102, 103, 104, 69, 68, 43, 44, 42, 20, 105, 106, 190.04, 195.01, 18, 7.01, and 41.

Sec. 5. District 4 is composed of Collin, Grayson, Hunt, Gregg, Kaufman, Rains, Rockwall, Smith, and Van Zandt Counties, and that part of Dallas County included in census tracts 181.01, 181.02, 181.03, 181.04, and 182.

Sec. 6. District 5 is composed of that part of Dallas County included in census tracts 190.01, 190.06, 190.07, 190.05, 189, 188, 185.01, 186, 187, 183, 184, 126, 127, 128, 129, 180, 125, 124, 82, 179, 123, 122.01, 81, 80, 1, 12, 79.01, 193.01, 193.02, 3, 2.02, 2.01, 10, 11.01, 11.02, 14, 15.01, 13.01, 13.02, 15.02, 22.02, 31.02, 30, 33, 34, 29, 35, 36, 28, 23, 24, 25, 26, 27.01, 27.02, 37, 38, 39.01, 39.02, 40, 83, 84, 85, 91.01, 91.02, 93.01, 93.02, 115, 122.02, 178.01, 178.02, 90.01, 90.02, 92.01, 121, 120, 119, 176.02, 176.01, 172, 175, 174, 177, 173.02, 173.01, 170, 194, 195.02, 71.01, 197, 196, 7.02, 9, 8, 16, 22.01, 17.01, 21, 31.01, 32.01, 32.02, 118, 92.02, 79.02, and 17.02.

Sec. 7. District 6 is composed of Brazos, Ellis, Hill, Johnson, Limestone, Navarro, and Robertson Counties; that part of Dallas County included in census tracts 164, 165.01, 165.02, 165.03, 165.04, 165.05, 166.04, 166.03, 166.02, 166.01, 109, 108, 61, 110, 111.01, 111.02, 112, 113, 167.01, 167.02, 168, 169.04, 169.01, 169.02, 169.03, 171, 116, and 117; and that part of Tarrant County included in census tracts 108.03, 109, 54.01,

55.01, 54.02, 42.01, 43, 42.02, 48.01, 47, 56, 48.02, 55.02, 57.01, 58, 59, 60.02, 60.01, 110.02, 57.02, 55.03, 55.04 and 110.01.

Sec. 8. District 7 is composed of that part of Harris County included in census tracts 558, 557, 554, 553, 552, 556, 555, 551, 545, 550, 549, 548, 547, 546, 544, 537, 538, 541, 540, 452, 451, 543, 542, 529, 528, 527, 526, 519, 517, 443, 442, 441, 444, 447, 448, 450, 449, 446, 445, 440, 421, 406, 420, 422, 439, 438, 437, 436, 423, 419, 424, 435, 407, 409, 408, 411, 418, 417, 416, 425, 426, 434, 429, 428, 427, 433, 430, 431, 432, 410, and 413, and that part of census tract 405 included in census block group 5.

Sec. 9. District 8 is composed of that part of Harris County included in census tracts 559, 244, 245, 243, 242, 536, 535, 241, 533, 240, 223, 531, 532, 222, 221, 224, 525, 524, 523, 522, 220, 218, 225, 217, 216, 215, 227, 208, 229, 228, 230, 214, 203, 209, 213, 231, 212, 202, 210, 211, 232, 233, 321, 320, 322, 350, 351, 352, 354, 234, 262, 261, 267, 268, 263, 265, 266, 270, 269, 271, 264, 361, 362, 273, 274, 272, 275, 364, 360, 363, 365, 530, 539, and 534.

Sec. 10. District 9 is composed of Chambers, Galveston, and Jefferson Counties and that part of Harris County included in census tracts 250, 249, 247, 238, 251, 248, 246, 252, 253, 237, 236, 254, 256, 255, 257, 258, 235, 259, 260, 226, and 239.

Sec. 11. District 10 is composed of Austin, Bastrop, Blanco, Burleson, Caldwell, Colorado, Fayette, Hays, Lee, Travis, Waller, and Washington Counties.

Sec. 12. District 11 is composed of Bell, Bosque, Burnet, Coryell, Falls, Hamilton, Hood, Lampasas,

McLennan, Milam, Mills, Parker, Somervell, and Williamson Counties.

Sec. 13. District 12 is composed of that part of Tarrant County not included in district 6 or 24.

Sec. 14. District 13 is composed of Archer, Armstrong, Baylor, Briscoe, Carson, Childress, Clay, Collingsworth, Cottle, Dallam, Dickens, Donley, Foard, Gray, Hall, Hansford, Hardeman, Hartley, Hemphill, Hutchinson, King, Knox, Lipscomb, Moore, Motley, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher, Wheeler, Wichita, and Wilbarger Counties.

Sec. 15. District 14 is composed of Aransas, Calhoun, Jackson, Matagorda, Nueces, Refugio, San Patricio, Victoria, and Wharton Counties, and that part of Brazoria County included in enumeration districts 108, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 153B, 158, 159, 160, and 160B.

Sec. 16. District 15 is composed of Brooks, Cameron, Duval, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kleberg, Live Oak, McMullen, Starr, Willacy, and Zapata Counties.

Sec. 17. District 16 is composed of Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Loving, Presidio, Reeves, Ward, and Winkler Counties, and that part of Ector County not included in district 19.

Sec. 18. District 17 is composed of Borden, Brown, Callahan, Coleman, Comanche, Cooke, Crosby, Eastland, Erath, Fisher, Floyd, Garza, Haskell, Howard, Jack, Jones, Kent, McCulloch, Mitchell, Montague,

Nolan, Palo Pinto, San Saba, Scurry, Shackelford, Stephens, Stonewall, Taylor, Throckmorton, Wise, and Young Counties.

Sec. 19. District 18 is composed of that part of Harris County included in census tracts 219, 521, 520, 510, 518, 509, 207, 511, 513, 512, 507, 508, 206, 204, 205, 503, 506, 516, 514, 515, 505, 504, 502, 501, 201, 121, 401, 126, 121, 123, 402, 125, 403, 404, 124, 303, 302, 301, 311, 310, 312, 309, 313, 304, 306, 305, 316, 307, 308, 314, 315, 317, 330, 318, 328, and that part of census tract 405 not included in census block group 5.

Sec. 20. District 19 is composed of Andrews, Bailey, Castro, Cochran, Dawson, Deaf Smith, Gaines, Hale, Hockley, Lamb, Lubbock, Lynn, Martin, Midland, Parmer, Terry, and Yoakum Counties, and that part of Ector County included in census tracts 3, 4, 5, 6, 7, 24, and 25, and that part of census tract 21 East of U.S. Highway 385 and North of the Texas and Pacific Railroad.

Sec. 21. District 20 is composed of that part of Bexar County not included in district 21 or 23.

Sec. 22. District 21 is composed of Bandera, Coke, Comal, Concho, Crane, Crockett, Edwards, Gillespie, Glasscock, Irion, Kendall, Kerr, Kimble, Kinney, Llano, Mason, Menard, Pecos, Reagan, Real, Runnels, Schleicher, Sterling, Sutton, Terrell, Tom Green, Upton, Uvalde, and Val Verde Counties, and that part of Bexar County included in census tracts 1719, 1720, 1816, 1817, 1806, 1807, 1815, 1821, 1820, 1819, 1915, 1916, 1914, 1818, 1814, 1809, 1810, 1811, 1813, 1812, 1911, 1912, 1909, 1913, 1207, 1210, 1209, 1208, 1206, 1203, 1204, 1803, 1808, 1802, 1908, 1718, 1717, 1714, 1805, 1917, 1211, 1212,

1213, 1617, 1219, 1218, and 1215.

Sec. 23. District 22 is composed of Fort Bend County; that part of Brazoria County not included in district 14; and that part of Harris County included in census tracts 412, 414, 415, 331, 329, 332, 333, 334, 339, 340, 335, 338, 336, 337, 341, 343, 342, 319, 325, 326, 324, 334, 353, 355, 356, 349, 357, 358, 366, 348, 359, 347, 346, 345, 370, 367, 369, 368, 373, 374, 371, 372, 375, 327, and 323.

Sec. 24. District 23 is composed of Atascosa, Bee, DeWitt, Dimmit, Frio, Goliad, Gonzales, Guadalupe, Karnes, LaSalle, Lavaca, Maverick, Medina, Webb, Wilson, and Zavala Counties, and that part of Bexar County included in census tracts 1619, 1620, 1612, 1613, 1610, 1611, 1512, 1520, 1521, 1513, 1511, 1514, 1516, 1518, 1519, 1522, 1416, 1415, 1418, 1417, 1414, 1413, 1419, 1312, 1313, 1314, 1310, 1309, 1315, 1205, 1214, 1217, 1216, 1317, 1316, 1318, 1517, 1615, and 1618.

Sec. 25. District 24 is composed of Denton County; that part of Dallas County included in census tracts 153.01, 153.02, 144, 141.04, 141.03, 141.02, 154, 161, 141.01, 155, 160, 162, 156, 157, 159, 163, 158, 107, 67, 199, 65, 64, 45, 53, 52, 46, 47, 51, 50, 63.02, 62, 48, 54, 56, 49, 89, 55, 88, 86, 114.02, 87.01, 87.02, 57, 59.01, 59.02, 60.01, 63.01, 114.01, and 60.02, and that part of Tarrant County included in census tracts 65.05, 131, 130, 218, 217.02, 217.01, 216.02, 216.01, 65.04, 65.01, 14.01, 65.02, 65.03, 14.03, 13, 216.03, 115.01, 115.02, 222, 223, 225, 224, 221, 220, 219, 229, 228, 227, 226, 115.03, 115.04, 114, 111.02, 60.03, 112.02, 112.01, and 113.

Sec. 26. The terms "census tract" and "census enumeration district,"as used in this Act, mean those

geographic areas outlined and identified as such on official place, county, and metropolitan map series maps prepared by the United States Department of Commerce Bureau of the Census for the Nineteenth Decennial Census of the United States, enumerated as of April 1, 1970. "Block groups" are subdivisions of census tracts as defined on census metropolitan maps which differentiate block groups by the first digit of the block numbers assigned to city blocks within each tract.

Sec. 27. The Texas Legislative Council shall furnish to the Commissioners Court of each county which is divided into two or more districts appropriate maps showing census tract, census enumeration district, or census block group lines to facilitate the identification of district lines.

Sec. 28. Chapter 342, Acts of the 60th Legislature, Regular Session, 1967 (Article 197c, Vernon's Texas Civil Statutes), is repealed.

Sec. 29. Nothing in this Act affects the tenure in office of the present delegation in Congress, but this Act takes effect for the general election in 1972.

Sec. 30. The importance of this legislation and the crowded condition of the calendars in both Houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and this Rule is hereby suspended.

Lieutenant Governor Speaker of the House

I hereby certify that S. B. No. 1 passed the Senate

on June 1, 1971, by a viva voce vote; June 2, 1971, Senate refused to concur in House amendments and requested appointment of Conference Committee; June 2, 1971, House granted request of the Senate; June 4, 1971, Senate adopted Conference Report by the following vote: Yeas 17, Nays 9, and one paired vote.

_____

Secretary of the Senate

I hereby certify that S. B. No. 1 passed the House on June 2, 1971, with amendments, by the following vote: Yeas 66, Nays 49; June 2, 1971, House granted request of the Senate for appointment of Conference Committee; June 4, 1971, House adopted Conference Report by the following vote: Yeas 80, Nays 53, and one present not voting.

_____

Chief Clerk of the House

Approved:

_____

Date

_____

Governor

EXHIBIT B

PROPOSED CONGRESSIONAL DISTRICTS

DISTRICT 1 is composed of Bowie, Camp, Cass, Cherokee, Delta, Fannin, Franklin, Harrison, Henderson, Hopkins, Lamar, Marion, Morris, Panola, Red River, Rusk, San Augustine, Shelby, Titus, Upshur, and Wood Counties; that part of Hunt County included in the Lone Oak census county division; and that part of Rains County included in the Emory census county division.

DISTRICT 2 is composed of Anderson, Angelina, Grimes, Hardin, Houston, Jasper, Leon, Liberty, Madison, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Jacinto, Trinity, Tyler and Walker Counties, and all of Freestone County not included in the Streetman Town part of the Wortham census county division.

DISTRICT 3 is composed of that part of Collin County included in the Nevada, Plano, and Wylie census county divisions; that part of Denton County included in the Lewisville census county division; and that part of Dallas County included in census tracts 1, 2.01, 2.02, 3, 6.01, 7.02, 9, 10, 11.01, 11.02, 71.01, 72, 73.01, 73.02, 74, 75.01, 75.02, 76.01, 76.02, 76.03, 76.04, 77, 78.01, 78.02, 78.03, 79.01, 79.02, 80, 81, 82, 94, 95, 96.01, 96.02, 96.03, 96.04, 97, 98, 99, 128, 129, 130.01, 130.02, 131, 132, 133, 134.01, 134.02, 135, 136.01, 136.02, 136.03, 137.01, 137.02, 137.03, 137.04, 137.05, 138.01, 138.02, 139, 140.01, 140.02, 141.01, 141.02, 141.03, 142, 143, 146, 147, 185.02, 190.02, 190.03, 190.04, 190.06, 191, 192.01, 192.02, 192.03, 192.04, 192.05, 192.06, 192.07, 193.01, 193.02, 194, 195.01,

195.02, 196, 197, and 198.

DISTRICT 4 is composed of Grayson, Gregg, Kaufman, Rockwall, Smith and Van Zandt Counties; that part of Collin County not included in District 3; that part of Cooke County included in the Gainesville North Callisburg census county division; that part of Denton County not included in District 3; that part of Hunt County not included in District 1; and that part of Rains County not included in District 1.

DISTRICT 5 is composed of that part of Dallas County not included in District 3 or 6 or 24.

DISTRICT 6 is composed of Brazos, Ellis, Hill, Johnson, Limestone, Navarro and Robertson Counties; that part of Freestone County not included in District 2; that part of Parker County included in the Weatherford Southeast and the Weatherford Southwest census county divisions; that part of Dallas County included in census tracts 60.01, 60.02, 61, 63.01, 108, 109, 110, 111.01, 111.02, 164, 165.01, 165.02, 165.03, 165.04, 165.05, 166.01, 166.02, 166.03, 166.04, 167.02, 168, 169.01, 169.02, 169.03 and 169.04; and that part of Tarrant County included in census tracts 60.03, 111.02, 112.01, 112.02, 108.03, 109, 54.01, 55.01, 54.02, 42.01, 43, 42.02, 48.01, 47, 56, 48.02, 55.02, 57.01, 58, 59, 60.02, 60.01, 110.02, 57.02, 55.03, 55.04 and 110.01.

DISTRICT 7 is composed of that part of Harris County included in census tracts 558, 557, 554, 553, 552, 556, 555, 551, 545, 550, 549, 548, 547, 546, 544, 537, 538, 541, 540, 452, 451, 543, 542, 529, 528, 527, 526, 519, 517, 443, 442, 441, 444, 447, 448, 450, 449, 446, 445, 440, 421, 406, 420, 422, 439, 438, 437, 436, 423, 419, 424, 435, 407, 409, 408, 411, 418, 417, 416, 425, 426, 434, 429, 428, 427, 433, 431, 432, 333, 413, 334, 536, and 430; and that

part of census tract 405 included in census block group 5.

DISTRICT 8 is composed of that part of Harris County included in census tracts 559, 244, 245, 243, 242, 535, 241, 533, 240, 223, 531, 532, 222, 221, 224, 525, 524, 523, 522, 220, 218, 225, 217, 216, 215, 227, 521, 229, 228, 230, 214, 203, 209, 213, 231, 212, 202, 210, 211, 232, 233, 321, 320, 322, 350, 351, 352, 354, 234, 262, 261, 267, 268, 263, 265, 266, 270, 269, 271, 264, 361, 362, 273, 274, 272, 275, 364, 360, 363, 365, 530, 539, 534, 254 and 353.

DISTRICT 9 is composed of Chambers, Galveston and Jefferson Counties and that part of Harris County included in census tracts 250, 249, 247, 238, 251, 248, 246, 252, 253, 237, 236, 256, 255, 257, 258, 235, 259, 260, 226 and 239.

DISTRICT 10 is composed of Austin, Bastrop, Blanco, Burleson, Fayette, Hays, Lee, Travis and Washington Counties; that part of Caldwell County included in the Martindale census county division; that part of Colorado County not included in the Garwood census county division; that part of Gonzales County included in the Waelder census county division; that part of Lavaca County included in the Moulton and Shiner census county divisions; that part of Waller County not included in the Brookshire census county division; and that part of Williamson County included in the Florence, Georgetown, Jarrell and Liberty Hill census county divisions.

DISTRICT 11 is composed of Bell, Bosque, Brown, Burnet, Coryell, Falls, Hamilton, Hood, Lampasas, McCulloch, McLennan, Milam, Mills, San Saba, and

Somervell Counties; that part of Coleman County not included in the Coleman census county division; that part of Comanche County included in the Gustine census county division; that part of Erath County included in the Stephenville South census county division; and that part of Williamson County not included in District 10.

DISTRICT 12 is composed of that part of Tarrant County not included in District 6 or 24.

DISTRICT 13 is composed of Archer, Armstrong, Briscoe, Carson, Childress, Clay, Collingsworth, Cottle, Dallam, Dickens, Donley, Foard, Gray, Hall, Hansford, Hardeman, Hartley, Hemphill, Hutchinson, King, Lipscomb, Moore, Motley, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher, Wheeler, Wichita and Wilbarger Counties.

DISTRICT 14 is composed of Aransas, Calhoun, Jackson, Matagorda, Neuces, Refugio, San Patricio, Victoria and Wharton Counties; that part of Colorado County not included in District 10; and that part of Lavaca County not included in District 10.

DISTRICT 15 is composed of Brooks, Cameron, Duval, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kleberg, Live Oak, McMullen, Starr, Willacy, and Zapata Counties; that part of Bee County included in the Pettus-Pawnee census county division; and that part of Karnes County included in the Kenedy census county division.

DISTRICT 16 is composed of Culberson, El Paso, Hudspeth, Loving, Presidio, Ward and Winkler Counties; that part of Jeff Davis County included in the

Valentine census county division; that part of Reeves County included in the Pecos census county division; and that part of Ector County not included in District 19.

DISTRICT 17 is composed of Baylor, Borden, Callahan, Crosby, Eastland, Fisher, Floyd, Garza, Haskell, Howard, Jack, Jones, Kent, Knox, Lynn, Mitchell, Montague, Nolan, Palo Pinto, Scurry, Shackelford, Stephens, Stonewall, Taylor, Throckmorton, Wise and Young Counties; that part of Coleman County not included in District 11; that part of Comanche County not included in District 11; that part of Cooke County not included in District 4; that part of Dawson County included in the Lamesa Southeast census county division; that part of Erath County not included in District 11; and that part of Parker County not included in District 6.

DISTRICT 18 is composed of that part of Harris County not included in District 7 or 8 or 9 or 22.

DISTRICT 19 is composed of Andrews, Bailey, Castro, Cochran, Deaf Smith, Gaines, Hale, Hockley, Lamb, Lubbock, Martin, Midland, Parmer, Terry and Yoakum Counties; that part of Dawson County not included in District 17; and that part of Ector County included in census tracts, 1, 2, 3, 5, 6, 7, 8, 9, 21, 24 and 25.

DISTRICT 20 is composed of that part of Bexar County not included in District 21 or 23.

DISTRICT 21 is composed of Bandera, Brewster, Coke, Comal, Concho, Crane, Crockett, Edwards, Gillespie, Glasscock, Irion, Kendall, Kerr, Kimble, Llano,

Mason, Menard, Pecos, Reagan, Real, Runnels, Schleicher, Sterling, Sutton, Terrell, Tom Green, Upton, and Val Verde Counties; that part of Jeff Davis County not included in District 16; that part of Medina County in the D'Harris and Hondo census county divisions; that part of Reeves County not included in District 16; and that part of Bexar County included in census tracts 1719, 1720, 1816, 1817, 1806, 1807, 1815, 1821, 1820,1819, 1915, 1916, 1914, 1818, 1814, 1809, 1810, 1811, 1813, 1812, 1911, 1912, 1909, 1913, 1207, 1210, 1209, 1208, 1206, 1203, 1204, 1803, 1808, 1802, 1908, 1718, 1717, 1714, 1805, 1917, 1211, 1212, 1213, 1617, 1219, 1218, and 1215.

DISTRICT 22 is composed of that part of Fort Bend Counties; that part of Waller County not included in District 10; and that part of Harris County included in census tracts 412, 414, 415, 331, 332, 329, 366, 339, 340, 335, 338, 336, 337, 341, 343, 342, 319, 325, 326, 324, 410, 355, 356, 349, 357, 358, 348, 359, 347, 346, 345, 370, 367, 369, 368, 373, 374, 371, 372, 375, 327, 323, and 344.

DISTRICT 23 is composed of Atascosa, DeWitt, Dimmit, Frio, Goliad, Guadalupe, Kinney, LaSalle, Maverick, Uvalde, Webb, Wilson and Zavala Counties; that part of Bee County not in District 15; that part of Caldwell County not in District 10; that part of Gonzales County not in District 10; that part of Karnes County not in District 15; that part of Medina County not in District 21; and that part of Bexar County included in census tracts 1619, 1620, 1612, 1613, 1610, 1611, 1512, 1520, 1521, 1513, 1511, 1514, 1516, 1518, 1519, 1522, 1416, 1415, 1418, 1417, 1414, 1413, 1419, 1312, 1313, 1314, 1310, 1309, 1315, 1205, 1214, 1217, 1216, 1317, 1316, 1318, 1517, 1615, 1618 and 1508.

DISTRICT 24 is composed of that part of Dallas

County included in census tracts 20, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 59.01, 59.02, 62, 63.02, 64, 65, 67, 68, 69, 86, 87.01, 87.02, 88, 89, 101, 102, 103, 104, 105, 106, 107, 112, 113, 114.01, 114.02, 141.04, 144, 145, 151, 152, 153.01, 153.02, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 167.01 and 199; and that part of Tarrant County included in census tracts 135.01, 64, 65.05, 131, 130, 218, 217.02, 217.01, 216.02, 216.01, 65.04, 65.02, 65.03, 13, 216.03, 115.01, 115.02, 222, 223, 225, 224, 221, 220, 219, 229, 228, 227, 226, 115.03, 115.04, 114 and 113.

The terms "census tract" and "census county division" means those geographic areas outlined and identified as such on official place, county, and metropolitan map series maps prepared by the United States Department of Commerce Bureau of the Census for the Nineteenth Decennial Census of the United States, enumerated as of April 1, 1970. The population figures for counties and census county divisions are those published January, 1971, in the United States Department of Commerce publication PC (V1)—45 Texas, 1970 Census of Population, advance report, Final Population Counts. "Block groups" are subdivisions of census tracts as defined on census metropolitan maps which differentiate block groups by the first digit of the block numbers assigned to city blocks within each tract.

(Title Omitted in printing.)
[Filed, November 15, 1971]

DEFENDANT'S ANSWER

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Bob Bullock, Secretary of State of the State of Texas, the Defendant in the above styled and numbered cause, represented herein by Crawford C. Martin, Attorney General of Texas, and in reply to Plaintiffs' Complaint files this his Answer and would respectfully show the Court as follows:

I.

Plaintiffs' Complaint fails to state a cause of action upon which relief can be granted.

II.

A. The Defendant admits the allegations contained in paragraphs A, B and C of paragraph III of Plaintiffs' Complaint.

B. The Defendant admits the allegations contained in subparagraphs (1) through (6) of paragraph F of paragraph III of Plaintiffs' Complaint.

C. The Defendant admits the allegations contained in subparagraph (8) of paragraph F of paragraph III of Plaintiffs' Complaint.

D. The Defendant denies the allegations contained in paragraphs E, G and H of paragraph III of Plaintiffs' Complaint.

E. The Defendant denies the allegations contained in subparagraph (7) of paragraph F of paragraph III of Plaintiffs' Complaint.

F. The Defendant denies the allegations contained in paragraph IV of Plaintiffs' Complaint.

G. The Defendant admits those allegations contained in paragraph I of Plaintiffs' Complaint concerning the Defendant and the notice to be given to the Governor of the State of Texas and the Attorney General of the State of Texas, but to the remaining allegations contained in paragraph I of Plaintiffs' Complaint the Defendant is without sufficient knowledge or information to either admit or deny the truth of such allegations, and therefore the same are denied.

H. The Defendant admits the allegations contained in the last sentence of paragraph II of Plaintiffs' Complaint, but the Defendant does not have sufficient knowledge or information to either admit or deny the remaining allegations of paragraph II of Plaintiffs' Complaint, and therefore the same are denied.

I. The Defendant admits the allegations contained in paragraph D of paragraph III of Plaintiffs' Complaint that Section 2 of Article I of the Federal Constitution requires that Congressional districts be as compact, contiguous and as nearly equal in population as is practical, but the Defendant denies the remaining allegations contained in paragraph D of paragraph III of Plaintiffs' Complaint.

J. The Defendant admits the allegations contained in paragraph K of paragraph III of Plaintiffs'

Complaint with the exception of the last sentence thereof, which the Defendant denies.

K. The Defendant denies the allegations contained in paragraphs I and J of paragraph III of Plaintiffs' Complaint.

III.

The Defendant affirmatively alleges that Senate Bill 1, Acts of the 62nd Legislature, 1971, Regular Session, which apportions the State of Texas into Congressional districts complies with the Constitution and laws of the United States and of the State of Texas.

WHEREFORE, PREMISES CONSIDERED, the Defendant prays that the relief sought by the Plaintiffs be in all things denied.

CRAWFORD C. MARTIN
Attorney General of Texas

s / .....

PAT BAILEY
Assistant Attorney General
P. O. Box 12548
Capitol Station
Austin, Texas 78711
Attorneys for Defendant

(Certificate of Service omitted in printing)

(Title omitted in printing.)

PLAINTIFFS' AMENDED COMPLAINT
[Filed, January 10, 1972]

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME DAN WEISER and other individuals named as Plaintiffs above, on behalf of themselves and others similarly situated comprising the class hereinafter defined, and complaining of the Honorable Bob Bullock in his capacity as Secretary of State of the State of Texas, hereinafter called Defendant, would for cause of action respectfully show:

I.

PARTIES—CLASS ACTION

Plaintiffs:

Plaintiff—Residence	Congressional District Per S.B. 1
DAN WEISER 3851 Rugged Circle Dallas, Texas	6th
DONALD COLEMAN 2412 Thirteenth Street Lubbock, Texas	19th
JOHN L. EDWARDS 1930 Dancliff Dallas, Texas	6th
HUGH ELLIOTT 3515 Cranbrook Wichita Falls, Texas	13th

JOHN FLETCHER
2701 22nd, No. 3
Lubbock, Texas — 19th

JOHN R. KARR
520 Prospect
El Paso, Texas — 16th

JOYCE V. KARR
520 Prospect
El Paso, Texas — 16th

BENJAMIN NEWCOMB
3905 B 21st Street
Lubbock, Texas — 19th

NORMA PALMER
206 Mary Drive
Iowa Park, Texas — 13th

MARVIN ZIMET
6200 Pinehurst
El Paso, Texas — 16th

All Plaintiffs are qualified and duly registered to vote in elections for the United States House of Representatives in their respective districts.

Class Action:

Plaintiffs sue on behalf of themselves and all other qualified voters, registered and unregistered, within the several districts wherein the respective Plaintiffs reside as well as all other qualified voters in all other congressional districts in the State of Texas.

That the number of persons comprising the class so

defined is so numerous as to make it impossible to bring them before the Court. That Plaintiffs, as qualified and registered voters, are fairly representative of the class as defined.

That by virtue of the foregoing, this action is properly brought by these Plaintiffs as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

Defendant:

The Defendant Bob Bullock is the duly qualified and acting Secretary of State of the State of Texas. That by the provisions of Article 1.03 of the Texas Election Code (Acts, 60th Leg., Ch. 723, p. 1860 §3, 1967) he is, by virtue of his office, the chief election officer of the State of Texas and is charged with the duty, inter alia, of ". . . obtain[ing] and maintain[ing] uniformity in the application, operation and interpretation of the election laws." Said Defendant may be served at his offices in the State Capitol Building in Austin, Texas.

That pursuant to the provisions of 28 U.S.C. §2284, Notice of hearings in this suit must be given to the Honorable Preston Smith, Governor of the State of Texas at his office or official residence in Austin, Texas, and to the Honorable Crawford Martin, Attorney General of the State of Texas at his office in Austin, Texas.

II.

JURISDICTION

Plaintiffs, on behalf of themselves and others simi-

larly situated, sue to have the Texas Statute establishing congressional districts for the State of Texas (S.B. 1, Acts 62nd Leg., 1971) declared violative of Article I §2 of the U. S. Constitution and of the XIVth Amendment, §§ 1 & 2 to the U. S. Constitution, and to enjoin its enforcement and the conduct of elections thereunder. Thus, this Court has jurisdiction, sitting as a three-judge Court under Title 28 of the U. S. Code, §1343 and §2281.

III.

CAUSE OF ACTION UNDER ARTICLE I §2

A. That under ARTICLE I §2, Cl. 3 of the U. S. Constitution, as a result of the 1970 decennial federal census, the State of Texas was apportioned twenty-four members of the United States House of Representatives.

B. That the 62nd Legislature of the State of Texas enacted S.B. 1 appended hereto as Exhibit A and herewith incorporated by reference for all purposes as though set forth at length herein. That said statute divides the State into twenty-four congressional districts and provides that one member of the House of Representatives shall be elected from each district. Said congressional redistricting plan is hereinafter referred to as "Plan A".

C. That said statute provides that it will become effective for the general election in 1972, and, by implication, for the primary elections to be held by the Democratic and Republican parties of Texas prior thereto pursuant to Article 13.02 of the Texas Election Code (Acts 52nd Leg., Ch. 492, p. 1097, Art. 180, 1951).

D. That Article I, §2 of the U. S. Constitution requires that such congressional districts be as compact, contiguous and as nearly equal in population as is practicable so that the vote cast by each voter will be equal in weight to the vote of every other voter.

E. That the congressional districts established by S.B. 1 are not as compact, contiguous and as nearly equal in population as is practicable; and therefore said statute violates on its face Article I §2 of the U. S. Constitution. Thus, Plaintiffs, and others similarly situated are deprived of their Constitutional right to have their vote count for as much as every other voter.

F. In support of the foregoing, Plaintiffs show:

(1) that the population of the State of Texas, according to the 1970 federal census, was eleven million, one hundred ninety-six thousand, seven hundred and thirty (11,196,730) persons;

(2) that mathematically, each congressional district should contain four hundred sixty-six thousand, five hundred and thirty (466,530) persons;

(3) that the district containing the largest population according to the census is the Thirteenth (13th) District, which contains four hundred seventy-seven thousand, eight hundred and fifty-six (477,856) persons, or eleven thousand, three hundred and twenty-six (11,326) persons more than a numerically equal district;

(4) that the district containing the smallest population according to the census is the Twenty-second

(22nd) District, which contains Four hundred fifty-four thousand, eight hundred twenty (454,820) persons, or eleven thousand, seven hundred ten (11,710) persons less than a numerically equal district;

(5) that expressed in percentages, the population of the Thirteenth (13th) District is 2.4% greater than a numerically equal district; and the population of the Twenty-second (22nd) District is 2.5% less than a numerically equal district;

(6) that the population of the largest district is greater than the smallest district by twenty-three thousand thirty six (23,036) persons; or, expressed in percentages, 4.9% greater;

(7) that the vote of a voter in the Thirteenth (13th) District is worth less than 96% of the vote of a voter in the Twenty-second (22nd) District;

(8) that the population of each district established by S.B. 1, according to the federal decennial census, together with its deviation from the mathematically equal district, expressed numerically and in percentages, is shown by the following table, viz:

	District Population	+Differences (−)	% Difference
1	461,879	−4651	1.00
2	466,836	+306	.01
3	465,221	−1309	.28
4	463,142	−3388	.73
5	465,093	−1437	.31
6	467,913	+1383	.30
7	461,704	−4826	1.03
8	461,216	−5314	1.14

9	467,483	+953	.20
10	465,498	−1037	.22
11	468,148	+1618	.35
12	465,671	−859	.18
13	477,856	+11,326	2.43
14	474,467	+7937	1.70
15	458,581	−7949	1.70
16	477,614	+11,084	2.38
17	467,912	+1382	.30
18	462,062	−4468	.96
19	477,459	+10,929	2.34
20	467,942	+1412	.30
21	466,656	+126	.03
22	454,820	−11,710	−2.51
23	466,248	−282	.06
24	465,314	−1216	.26

G. That the districts created by S.B. 1 were created as a result of political expediency, to perpetuate in office those Representatives whose political philosophy coincided with that of the dominant forces in the State legislature, to create "safe seats" for those of a like mind, to provide a political denouement for past political favors or grievances, to neutralize the votes of ethnic or economic blocs, and with only minimal regard to the constitutional mandate of "one man, one vote."

H. That had the legislature desired to enact a statute consonant with the mandate of Article I §2 of the U. S. Constitution it could have drawn twenty-four districts having almost the same geographic boundaries whereby the population difference between the largest and smallest is only six hundred ninety-six (696) persons, or .1 percent (0.001). Such a plan is annexed hereto as Exhibit B, and herewith incorporated

by reference for all purposes as though set forth at length herein. Said Plan will be referred to as "Plan B".

That said Plan B results from an adjustment of Plan A enacted by the legislature so as to equalize as closely as practicable the population of each district. The said proposed Plan B thus takes into account all the factors other than population relied on by the legislature in the enactment of S.B. 1 (herein referred to as Plan A). However, the primary emphasis of Plan B is on making the districts as numerically equal in population as is practicable rather than emphasizing the non-population factors as was done in Plan A.

I. That the population of each district under Plaintiffs' Plan B, according to the federal decennial census, together with its deviation from the mathematically equal district, expressed numerically, is shown by the following table, viz:

District	Population	Differences (+)(−)
1	466,545	+ 15
2	466,565	+ 35
3	466,266	−264
4	466,234	−296
5	466,620	+ 90
6	466,285	−245
7	466,336	−194
8	466,704	+174
9	466,678	+148
10	466,313	−217
11	466,258	−272
12	466,930	+400
13	466,663	+133
14	466,437	− 93

15	466,359	−171
16	466,663	+133
17	466,432	− 98
18	466,520	− 10
19	466,649	+119
20	466,514	− 16
21	466,753	+223
22	466,707	+177
23	466,424	−106
24	466,875	+345

Percentage deviation is so small as to be of no significance, and is therefore omitted.

J. That had the legislature desired to enact a statute consonant with the mandate of Article I §2 of the U. S. Constitution, that is a plan which made each district as compact and contiguous and as nearly equal in population as each other district as practicable, taking into account solely population and not taking into account "social", "cultural", "economic" or "other factors" including preservation of incumbent congressmen, it could have enacted a plan the same as or substantially similar to that plan set forth in Exhibit C annexed hereto and herewith incorporated by reference as though set forth at length herein. That such plan is hereinafter referred to as "Plan C". That Plan C provides for districts that are significantly more compact and contiguous than those set forth in Plan A. That the population difference between the largest and smallest district proposed under Plan C is 1323 persons which is less than three tenths (3/10) of one per cent (1%) or 0.0028.

K. That the population of each district under Plaintiffs' Plan C, according to the federal decennial census,

together with its deviation from the mathematically equal district, expressed numerically, is shown by the following table, viz:

District	Population	Differences (+ or −)
1	465,986	−544
2	466,817	+287
3	466,835	+305
4	467,108	+578
5	466,258	−272
6	467,023	+493
7	466,336	−194
8	466,704	+174
9	466,678	+148
10	466,303	−227
11	466,569	+ 39
12	466,926	+396
13	467,178	+648
14	466,437	− 93
15	466,359	−171
16	465,941	−589
17	466,340	−190
18	466,520	− 10
19	466,154	−376
20	466,654	+124
21	466,875	+345
22	466,707	+177
23	466,167	−363
24	465,855	−675

Percentage deviation is so small as to be of no significance, and is therefore omitted.

IV.

S.B. 1 DISENFRANCHISES CERTAIN VOTERS

A. That under S.B. 1, the Eighteenth (18th) District purporting to encompass the central portion of Houston, in Harris County, duplicates census tract number 121, containing three thousand, seven hundred nineteen (3,719) persons and wholly omits census tract number 122 containing four thousand, six hundred twenty-seven (4,627) persons. That the effect of such omission is to wholly disenfranchise in congressional elections the otherwise qualified voters residing in said census tract and to understate the population of said district by nine hundred and eight (908) persons. That such error is not made in the plan advocated by Plaintiffs contained in Exhibit B and Exhibit C.

B. That under S.B. 1, the Twenty-Second (22nd) District purporting to encompass the south and southeast portion of Harris County (Houston), duplicates census tract number 334 containing five thousand, five hundred fifty-nine (5,559) persons and wholly omits census tract number 344 containing one thousand, seven hundred and six (1,706) persons. That the effect of such omission is to wholly disenfranchise in congressional elections the otherwise qualified voters residing in said census tract and to overstate the population of said district by three thousand eight hundred and fifty-three (3,853) persons. That such error is not made in the plan advocated by Plaintiffs contained in Exhibit B and Exhibit C.

V.

CAUSE OF ACTION UNDER XIVTH AMENDMENT

Plaintiffs adopt by reference the allegations of Paragraph III hereof.

Plaintiffs further allege:

A. that it constitutes an invidious discrimination in favor of those residents of less populous districts over those residents of more populous districts;

B. that the plan embodied therein is wholly arbitrary and irrational when measured by constitutional requirements or equality.

That for these reasons S.B. 1 denies Plaintiffs and those similarly situated equal protection of the law, which denial is forbidden by §I of the XIVth Amendment to the U. S. Constitution.

VI.

RELIEF

WHEREFORE, Plaintiffs pray:

1. That Defendant be cited to appear and answer herein.

2. That the Court enter an Order pursuant to Rule 23, F.R.C.P. adjudging this suit to be a class action on behalf of all qualified voters in the State of Texas.

3. That a three-judge Court be convened pursuant to 28 U.S.C.A. §2284.

4. That a preliminary injunction issue restraining and enjoining the Defendant from conducting or causing to be conducted any general or primary elections to fill congressional seats based upon the districts established in the said statute.

5. That upon final hearing said statute be adjudged and declared unconstitutional and therefore void.

6. That upon final hearing a permanent injunction issue upon the same terms as the preliminary injunction.

7. That appropriate orders issue upon final hearing directing the legislature of the State of Texas to enact a law creating congressional districts which meet the requirements of the U.S . Constitution.

8. That if the legislature fails to enact a law creating congressional districts which meet the requirements of the U. S. Constitution, either Plan B or Plan C promulgated by Plaintiffs or any variation thereof supported by the evidence and the law be adopted as the judgment of the Court and appropriate orders issued to require that all congressional elections be conducted thereunder until a constitutionally acceptable law is enacted.

9. In the alternative, if the legislature fails to enact a law creating congressional districts which meet the requirements of the U. S. Constitution, that the Court enter appropriate orders to require that all congressional seats apportioned to the State of Texas be filled by at-large elections.

10. That all costs be adjudged against the Defendant; and that the Court retain jurisdiction to render such further orders as may seem appropriate.

Respectfully submitted,

RISCHMAN, ROSENBERG, KASMIR &
PRESTON
601 Kirby Building
1509 Main Street
Dallas, Texas 75201
744-5511

By: s/Lawrence Fischman

By: s/David H. Rosenberg

(Certificate of Service omitted in printing.)

EXHIBIT A

AN ACT

relating to reapportionment of congressional districts; repealing Chapter 342, Acts of the 60th Legislature, Regular Session, 1967 (Article 197c, Vernon's Texas Civil Statutes); and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. The State of Texas is apportioned into Congressional Districts as provided in the following sections. Each district is entitled to elect one Member to the House of Representatives of the Congress of the United States.

Sec. 2. District 1 is composed of Bowie, Camp, Cass, Cherokee, Delta, Fannin, Franklin, Harrison, Henderson, Hopkins, Lamar, Marion, Morris, Panola, Red River, Rusk, San Augustine, Shelby, Titus, Upshur, and Wood Counties.

Sec. 3. District 2 is composed of Anderson, Angelina, Freestone, Grimes, Hardin, Houston, Jasper, Leon, Liberty, Madison, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Jacinto, Trinity, Tyler, and Walker Counties.

Sec. 4. District 3 is composed of that part of Dallas County included in census tracts 192.05, 192.06, 192.07, 192.04, 192.03, 192.02, 192.01, 191, 190.02, 190.03, 185.02, 130.02, 130.01, 78.03, 78.02, 136.02, 136.03, 132, 133, 131, 78.01, 76.04, 77, 136.01, 96.04, 134.02, 76.03, 75.02, 137.04, 137.05, 138.01, 96.03, 96.02, 134.01, 134, 76.01, 76.02,

75.01, 74, 73.01, 73.02, 71.02, 4.03, 95, 94, 98, 97, 96.01, 138.02, 137.01, 137.02, 139, 140.01, 72, 6.01, 4.02, 4.01, 6.02, 5, 19, 100, 99, 137.03, 140.02, 142, 148, 147, 146, 145, 152, 149, 150, 151, 198, 143, 101, 102, 103, 104, 69, 68, 43, 44, 42, 20, 105, 106, 190.04, 195.01, 18, 7.01, and 41.

Sec. 5. District 4 is composed of Collin, Grayson, Hunt, Gregg, Kaufman, Rains, Rockwall, Smith, and Van Zandt Counties, and that part of Dallas County included in census tracts 181.01, 181.02, 181.03, 181.04, and 182.

Sec. 6. District 5 is composed of that part of Dallas County included in census tracts 190.01, 190.06, 190.07, 190.05, 189, 188, 185.01, 186, 187, 183, 184, 126, 127, 128, 129, 180, 125, 124, 82, 179, 123, 122.01, 81, 80, 1, 12, 79.01, 193.01, 193.02, 3, 2.02, 2.01, 10, 11.01, 11.02, 14, 15.01, 13.01, 13.02, 15.02, 22.02, 31.02, 30, 33, 34, 29, 35, 36, 28, 23, 24, 25, 26, 27.01, 27.02, 37, 38, 39.01, 39.02, 40, 83, 84, 85, 91.01, 91.02, 93.01, 93.02, 115, 122.02, 178.02, 90.01, 90.02, 92.01, 121, 120, 119, 176.02, 176.01, 172, 175, 174, 177, 173.02, 173.01, 170, 194, 195.02, 71.01, 197, 196, 7.02, 9, 8, 16, 22.01, 17.01, 21, 31.01, 32.01, 32.02, 118, 92.02, 79.02, and 17.02.

Sec. 7. District 6 is composed of Brazos, Ellis, Hill, Johnson, Limestone, Navarro, and Robertson Counties; that part of Dallas County included in census tracts 164, 165.01, 165.02, 165.03, 165.04, 165.05, 166.04, 166.03, 166.02, 166.01, 109, 108, 61, 110, 111.01, 111.02, 112, 113, 167.01, 167.02, 168, 169.04, 169.01, 169.02, 169.03, 171, 116, and 117; and that part of Tarrant County included in census tracts 108.03, 109, 54.01, 55.01, 54.02, 42.01, 43, 42.02, 48.01, 47, 56, 48.02, 55.02, 57.01, 58, 59, 60.02, 60.01, 110.02, 57.02, 55.03, 55.04, and 110.01.

Sec. 8. District 7 is composed of that part of Harris County included in census tracts 558, 557, 554, 553, 552, 556, 555, 551, 545, 550, 549, 548, 547, 546, 544, 537, 538, 541, 540, 452, 451, 543, 542, 529, 528, 527, 526, 519, 517, 443, 442, 441, 444, 447, 448, 450, 449, 446, 445, 440, 406, 420, 422, 439, 438, 437, 436, 423, 419, 424, 435, 407, 409, 408, 411, 418, 417, 416, 425, 426, 434, 429, 428, 427, 433, 430, 431, 432, 410, and 413, and that part of census tract 405 included in census block group 5.

Sec. 9. District 8 is composed of that part of Harris County included in census tracts 559, 244, 245, 243, 242, 536, 535, 241, 533, 240, 223, 531, 532, 222, 221, 224, 525, 524, 523, 522, 220, 218, 225, 217, 216, 215, 227, 208, 229, 228, 230, 214, 203, 209, 213, 231, 212, 202, 210, 211, 232, 233, 321, 320, 322, 350, 351, 352, 354, 234, 262, 261, 267, 268, 263, 265, 266, 270, 269, 271, 264, 361, 362, 273, 274, 272, 275, 364, 360, 363, 365, 530, 539, and 534.

Sec. 10. District 9 is composed of Chambers, Galveston, and Jefferson Counties and that part of Harris County included in census tracts 250, 249, 247, 238, 251, 248, 246, 252, 253, 237, 236, 254, 256, 255, 257, 258, 235, 259, 260, 226, and 239.

Sec. 11. District 10 is composed of Austin, Bastrop, Blanco, Burleson, Caldwell, Colorado, Fayette, Hays, Lee, Travis, Waller, and Washington Counties.

Sec. 12. District 11 is composed of Bell, Bosque, Burnet, Coryell, Falls, Hamilton, Hood, Lampasas, McLennan, Milam, Mills, Parker, Somervell, and Williamson Counties.

Sec. 13. District 12 is composed of that part of Tar

rant County not included in district 6 or 24.

Sec. 14. District 13 is composed of Archer, Armstrong, Baylor, Briscoe, Carson, Childress, Clay, Collingsworth, Cottle, Dallam, Dickens, Donley, Foard, Gray, Hall, Hansford, Hardeman, Hartley, Hemphill, Hutchinson, King, Knox, Lipscomb, Moore, Motley, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher, Wheeler, Wichita, and Wilbarger Counties.

Sec. 15. District 14 is composed of Aransas, Calhoun, Jackson, Matagorda, Nueces, Refugio, San Patricio, Victoria, and Wharton Counties, and that part of Brazoria County included in enumeration districts 108, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 153B, 158, 159, 160, and 160B.

Sec. 16. District 15 is composed of Brooks, Cameron, Duval, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kleberg, Live Oak, McMullen, Starr, Willacy, and Zapata Counties.

Sec. 17. District 16 is composed of Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Loving, Presidio, Reeves, Ward, and Winkler Counties, and that part of Ector County not included in district 19.

Sec. 18. District 17 is composed of Borden, Brown, Callahan, Coleman, Comanche, Cooke, Crosby, Eastland, Erath, Fisher, Floyd, Garza, Haskell, Howard, Jack, Jones, Kent, McCulloch, Mitchell, Montague, Nolan, Palo Pinto, San Saba, Scurry, Shackelford, Stephens, Stonewall, Taylor, Throckmorton, Wise, and Young Counties.

Sec. 19. District 18 is composed of that part of Harris County included in census tracts 219, 521, 520, 510, 518, 509, 207, 511, 513, 512, 507, 508, 206, 204, 205, 503, 506, 516, 514, 515, 505, 504, 502, 501, 201, 121, 401, 126, 122, 123, 402, 125, 403, 404, 124, 303, 302, 301, 311, 310, 312, 309, 313, 304, 306, 305, 316, 307, 308, 314, 315, 317, 330, 318, 328, and that part of census tract 405 not included in census block group 5.

Sec. 20. District 19 is composed of Andrews, Bailey, Castro, Cochran, Dawson, Deaf Smith, Gaines, Hale, Hockley, Lamb, Lubbock, Lynn, Martin, Midland, Parmer, Terry, and Yoakum Counties, and that part of Ector County included in census tracts 3, 4, 5, 6, 7, 24, and 25, and that part of census tract 21 East of U. S. Highway 385 and North of the Texas and Pacific Railroad.

Sec. 21. District 20 is composed of that part of Bexar County not included in district 21 or 23.

Sec. 22. District 21 is composed of Bandera, Coke, Comal, Concho, Crane, Crockett, Edwards, Gillespie, Glasscock, Irion, Kendall, Kerr, Kimble, Kinney, Llano, Mason, Menard, Pecos, Reagan, Real, Runnels, Schleicher, Sterling, Sutton, Terrell, Tom Green, Upton, Uvalde, and Val Verde Counties, and that part of Bexar County included in census tracts 1719, 1720, 1816, 1817, 1806, 1807, 1815, 1821, 1820, 1819, 1915, 1916, 1914, 1818, 1814, 1809, 1810, 1811, 1813, 1812, 1911, 1912, 1909, 1913, 1207, 1210, 1209, 1208, 1206, 1203, 1204, 1803, 1808, 1802, 1908, 1718, 1717, 1714, 1805, 1917, 1211, 1212, 1213, 1617, 1219, 1218, and 1215.

Sec. 23. District 22 is composed of Fort Bend County; that part of Brazoria County not included in dis-

trict 14; and that part of Harris County included in census tracts 412, 414, 415, 331, 329, 332, 333, 334, 339, 340, 335, 338, 336, 337, 341, 343, 342, 319, 325, 326, 324, 344, 353, 355, 356, 349, 357, 358, 366, 348, 359, 347, 346, 345, 370, 367, 369, 368, 373, 374, 371, 372, 375, 327, and 323.

Sec. 24. District 23 is composed of Atascosa, Bee, DeWitt, Dimmit, Frio, Goliad, Gonzales, Guadalupe, Karnes, LaSalle, Lavaca, Maverick, Medina, Webb, Wilson, and Zavala Counties, and that part of Bexar County included in census tracts 1619, 1620, 1612, 1613, 1610, 1611, 1512, 1520, 1521, 1513, 1511, 1514, 1516, 1518, 1519, 1522, 1416, 1415, 1418, 1417, 1414, 1413, 1419, 1312, 1313, 1314, 1310, 1309, 1315, 1205, 1214, 1217, 1216, 1317, 1316, 1318, 1517, 1615, and 1618.

Sec. 25. District 24 is composed of Denton County; that part of Dallas County included in census tracts 15301, 153.02, 144, 141.04, 141.02, 154, 161, 141.01, 155, 160, 162, 156, 157, 159, 163, 158, 107, 67, 199, 65, 64, 45, 53, 52, 46, 47, 51, 50, 63.02, 62, 48, 54, 56, 49, 89, 55, 88, 86, 114.02, 87.01, 87.02, 57, 59.01, 59.02, 60.01, 63.01, 114.01, and 60.02, and that part of Tarrant County included in census tracts 65.05, 131, 130, 218, 217.02, 217.01, 216.02, 216.01, 65.04, 65.01, 14.01, 65.02, 65.03, 14.03, 13, 216.03, 115.01, 115.02, 222, 223, 225, 224, 221, 220, 219, 229, 228, 227, 226, 115.03, 115.04, 114, 111.02, 60.03, 112.02, 112.01, and 113.

Sec. 26. The terms "census tract" and "census enumeration district," as used in this Act, mean those geographic areas outlined and identified as such on official place, county, and metropolitan map series maps prepared by the United States Department of Commerce Bureau of the Census for the Nineteenth Dec-

ennial Census of the United States, enumerated as of April 1, 1970. "Block groups" are subdivisions of census tracts as defined on census metropolitan maps which differentiate block groups by the first digit of the block numbers assigned to city blocks within each tract.

Sec. 27. The Texas Legislative Council shall furnish to the Commissioners Court of each County which is divided into two or more districts appropriate maps showing census tract, census enumeration district, or census block group lines to facilitate the identification of district lines.

Sec. 28. Chapter 342, Acts of the 60th Legislature, Regular Session, 1967 (Article 197c, Vernon's Texas Civil Statutes), is repealed.

Sec. 29. Nothing in this Act affects the tenure in office of the present delegation in Congress, but this Act takes effect for the general election in 1972.

Sec. 30. The importance of this legislation and the crowded condition of the calendars in both Houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and this Rule is hereby suspended.

Speaker of the House	Lieutenant Governor

I hereby certify that S. B. No. 1 passed the Senate on June 1, 1971, by a viva voce vote; June 2, 1971, Senate refused to concur in House amendments and requested appointment of Conference Committee; June 2, 1971, House granted request of the Senate; June 4,

1971, Senate adopted Conference Report by the following vote: Yeas 17, Nays 9, and one paired vote.

_____

Secretary of the Senate

I hereby certify that S. B. No. 1 passed the House on June 2, 1971, with amendments, by the following vote: Yeas 66, Nays 49; June 2, 1971, House granted request of the Senate for appointment of Conference Committee; June 4, 1971, House adopted Conference report by the following vote: Yeas 80, Nays 53, and one present not voting.

_____

Chief Clerk of the House

Approved:

_____

Date

_____

Governor

EXHIBIT B

PROPOSED CONGRESSIONAL DISTRICTS

DISTRICT 1 is composed of Bowie, Camp, Cass, Cherokeet, Delta, Fannin, Franklin, Harrison, Henderson, Hopkins, Lamar, Marion, Morris, Panola, Red River Rusk, San Augustine, Shelby, Titus, Upshur, and Wood Counties; that part of Hunt County included in the Lone Oak census county division; and that part of Rains County included in the Emory census county division.

DISTRICT 2 is composed of Anderson, Angelina, Grimes, Hardin, Houston, Jasper, Leon, Liberty, Madison, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Jacinto, Trinity, Tyler and Walker Counties, and all of Freestone County not included in the Streetman Town part of the Wortham census county division.

DISTRICT 3 is composed of that part of Collin County included in the Nevada, Plano, and Wylie census county divisions; that part of Denton County included in the Lewisville census county division; and that part of Dallas County included in census tracts 1, 2.01, 2.02, 3, 6.01, 7.02, 9, 11.01, 11.02, 71.01, 72, 73.01, 73.02, 74, 75.01, 75.02, 76.01, 76.02, 76.03, 76.04, 77, 78.01, 78.02, 78.03, 79.01, 79.02, 80, 81, 82, 94, 95, 96.01, 96.02, 96.03, 96.04, 97, 98, 99, 128, 129, 130.01, 130.02, 131, 132, 133, 134.01, 134.02, 135, 136.01, 136.02, 136.03, 137.01, 137.02, 137.03, 137.04, 137.05, 138.01, 138.02, 139, 140.01, 140.02, 141.01, 141.02, 141.03, 142, 143, 146, 147, 185.02, 190.02, 190.04, 190.06, 191, 192.01, 192.02, 192.03, 192.04, 192.05, 192.06, 192.07, 193.01, 193.02, 194, 195.01,

195.02, 196, 197, and 198.

DISTRICT 4 is composed of Grayson, Gregg, Kaufman, Rockwall, Smith and Van Zandt Counties; that part of Collin County not included in District 3; that part of Cooke County included in the Gainesville North Callisburg census county division; that part of Denton County not include in District 3; that part of Hunt County not included in District 1; and that part of Rains County not included in District 1.

DISTRICT 5 is composed of that part of Dallas County not included in District 3 or 6 or 24.

DISTRICT 6 is composed of Brazos, Ellis, Hill, Johnson, Limestone, Navarro and Robertson Counties; that part of Freestone County not included in District 2; that part of Parker County included in the Weatherford Southeast and the Weatherford Southwest census county divisions; that part of Dallas County included in census tracts 60.01, 60.02, 61, 63.01, 108, 109, 110, 111.01, 111.02, 164, 165.01, 165.02, 165.03, 165.04, 165.05, 166.01, 166.02, 166.03, 166.04, 167.02, 168, 169.01, 169.02, 169.03 and 169.04; and that part of Tarrant County included in census tracts 60.03, 111.02, 112.01, 112.02, 108.03, 109, 54.01, 55.01, 54.02, 42.01, 43, 42.02, 48.01, 47, 56, 48.02, 55.02, 57.01, 58, 59, 60.02, 60.01, 110.02, 57.02, 55.03, 55.04 and 110.01.

DISTRICT 7 is composed of that part of Harris County included in census tracts 558, 557, 554, 553, 552, 556, 555, 551, 545, 550, 549, 548, 547, 546, 544, 537, 538, 541, 540, 452, 451, 543, 542, 529, 528, 527, 526, 519, 517, 443, 442, 441, 444, 447, 448, 450, 449, 446, 445, 440, 421, 406, 420, 422, 439, 438, 437, 436, 423, 419, 424, 435, 407, 409, 408, 411, 418, 417, 416,

425, 426, 434, 429, 428, 427, 433, 431, 432, 333, 413, 334, 536, and 430; and that part of census tract 405 included in census block group 5.

DISTRICT 8 is composed of that part of Harris County included in census tracts 559, 244, 245, 243, 242, 535, 241, 533, 240, 223, 531, 532, 222, 224, 525, 524, 523, 522, 220, 218, 225, 217, 216, 215, 227, 521, 229, 228, 230, 214, 203, 209, 213, 231, 212, 202, 210, 211, 232, 233, 321, 320, 322, 350, 351, 352, 354, 234, 262, 261, 267, 268, 263, 265, 266, 270, 269, 271, 264, 361, 362, 273, 274, 272, 275, 364, 360, 363, 365, 530, 539, 534, 254 and 353.

DISTRICT 9 is composed of Chambers, Galveston and Jefferson Counties and that part of Harris County included in census tracts 250, 249, 247, 238, 251, 248, 246, 252, 253, 237, 236, 256, 255, 257, 258, 235, 259, 260, 226 and 239.

DISTRICT 10 is composed of Austin, Bastrop, Blanco, Burleson, Fayette, Hays, Lee, Travis and Washington Counties; that part of Caldwell County included in the Martindale census county division; that part of Colorado County not included in the Garwood census county division; that part of Gonzales County included in the Waelder census county division; that part of Lavaca County included in the Moulton and Shiner census county divisions; that part of Waller County not included in the Brookshire census county division; and that part of Williamson County included in the Florence, Georgetown, Jarrell and Liberty Hill census county divisions.

DISTRICT 11 is composed of Bell, Bosque, Brown, Burnet, Coryell, Falls, Hamilton, Hood, Lampasas,

McCulloch, McLennan, Milam, Mills, San Saba, and Somervell Counties; that part of Coleman County not included in the Coleman census county division; that part of Comanche County included in the Gustine census county division; that part of Erath County included in the Stephenville South census county division; and that part of Williamson County not included in District 10.

DISTRICT 12 is composed of that part of Tarrant County not included in District 6 or 24.

DISTRICT 13 is composed of Archer, Armstrong, Briscoe, Carson, Childress, Clay, Collingsworth, Cottle, Dallam, Dickens, Donley, Foard, Gray, Hall, Hansford, Hardeman, Hartley, Hemphill, Hutchinson, King, Lipscomb, Moore, Motley, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher, Wheeler, Wichita and Wilbarger Counties.

DISTRICT 14 is composed of Aransas, Calhoun, Jackson, Matagorda, Nueces, Refugio, San Patricio, Victoria and Wharton Counties; that part of Colorado County not included in District 10; and that part of Lavaca County not included in District 10.

DISTRICT 15 is composed of Brooks, Cameron, Duval, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kleberg, Live Oak, McMullen, Starr, Willacy, and Zapata Counties; that part of Bee County included in the Pettus-Pawnee census county division; and that part of Karnes County included in the Kenedy census county division.

DISTRICT 16 is composed of Culberson El Paso, Hudspeth, Loving, Presidio, Ward and Winkler Coun-

ties; that part of Jeff Davis County including the Valentine census county division; that part of Reeves County included in the Pecos census county division; and that part of Ector County not included in District 19.

DISTRICT 17 is composed of Baylor, Borden Callahan, Crosby, Eastland, Fisher, Floyd, Garza, Haskell, Howard, Jack, Jones, Kent, Knox, Lynn, Mitchell, Montague, Nolan, Palo Pinto, Scurry, Shackelford, Stephens, Stonewall, Taylor, Throckmorton, Wise and Young Counties; that part of Coleman County not included in District 11; that part of Comanche County not included in District 11; that part of Cooke County not included in District 4; that part of Dawson County included in the Lamesa Southeast census county division; that part of Erath County not included in District 11; and that part of Parker County not included in District 6.

DISTRICT 18 is composed of that part of Harris County not include in District 7 or 8 or 9 or 22.

DISTRICT 19 is composed of Andrews, Bailey, Castro, Cochran, Deaf Smith, Gaines, Hale, Hockley, Lamb, Lubbock, Martin, Midland, Parmer, Terry and Yoakum Counties; that part of Dawson County not included in District 17; and that part of Ector County included in census tracts 1, 2, 3, 5, 6, 7, 8, 9, 21, 24 and 25.

DISTRICT 20 is composed of that part of Bexar County not included in District 21 or 23.

DISTRICT 21 is composed of Bandera, Brewster, Coke, Comal, Concho, Crane, Crockett, Edwards, Gil-

lespie, Glasscock, Irion, Kendall, Kerr, Kimble, Llano, Mason, Menard, Pecos, Reagan, Real, Runnels, Schleicher, Sterling, Sutton, Terrell, Tom Green, Upton, and Val Verde Counties; that part of Jeff Davis County not included in District 16; that part of Medina County in the D'Harris and Hondo census county divisions; that part of Reeves County not included in District 16; and that part of Bexar County included in census tracts 1719, 1720, 1816, 1817, 1806, 1807, 1815, 1821, 1820, 1819, 1915, 1916, 1914, 1818, 1814, 1809, 1810, 1811, 1813, 1812, 1911, 1912, 1909, 1913, 1207, 1210, 1209, 1208, 1206, 1203, 1204, 1803, 1808, 1802, 1908, 1718, 1717, 1714, 1805, 1917, 1211, 1212, 1213, 1617, 1219, 1218, and 1215.

DISTRICT 22 is composed of Brazoria and Fort Bend Counties; that part of Waller County not included in District 10; and that part of Harris County included in census tracts 412, 414, 415, 331, 332, 329, 366, 339, 340, 335, 338, 336, 337, 341, 343, 342, 319, 325, 326, 324, 410, 355, 356, 349, 357, 358, 348, 359, 347, 346, 345, 370, 367, 369, 368, 373, 374, 371, 372, 375, 327, 323, and 344.

DISTRICT 23 is composed of Atascosa, DeWitt, Dimmit, Frio, Goliad, Guadalupe, Kinney, LaSalle, Maverick, Uvalde, Webb, Wilson and Zavala Counties; that part of Bee County not in District 15; that part of Caldwell County not in District 10; that part of Gonzales County not in District 10; that part of Karnes County not in District 15; that part of Medina County not in District 21; and that part of Bexar County included in census tracts 1619, 1620, 1612, 1613, 1610, 1611, 1512, 1520, 1521, 1513, 1511, 1514, 1516, 1518, 1519, 1522, 1416, 1415, 1418, 1417, 1414, 1413, 1419, 1312, 1313, 1314, 1310, 1309, 1315, 1205,

1214, 1217, 1216, 1317, 1316, 1318, 1517, 1615, 1618 and 1508.

DISTRICT 24 is composed of that part of Dallas County included in census tracts 20, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 59.01, 59.02, 62, 63.02, 64, 65, 67, 68, 69, 86, 87.01, 87.02, 88, 89, 101, 102, 103, 104, 105, 106, 107, 112, 113, 114.01, 114.02, 141.04, 144, 145, 151, 152, 153.01, 153.02, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 167.01 and 199; and that part of Tarrant County included in census tracts 135.01, 64, 65.05, 131, 130, 218, 217.02, 217.01, 216.02, 216.01, 65.04, 65.02, 65.03, 13, 216.03, 115.01, 115.02, 222, 223, 224, 224, 221, 220, 219, 229, 228, 227, 226, 115.03, 115.04, 114 and 113.

The terms "census tract" and "census county division" mean those geographic areas outlined and identified as such on official place, county, and metropolitan map series maps prepared by the United States Department of Commerce Bureau of the Census for the Nineteenth Decennial Census of the United States, enumerated as of April 1, 1970. The population figures for counties and census county divisions are those published January, 1971, in the United States Department of Commerce publication PC (VI)—45 Texas, 1970 Census of Population, advance report, Final Population Counts. "Block groups" are subdivisions of census tracts as defined on census metropolitan maps which differentiate block groups by the first digit of the block numbers assigned to city blocks within each tract.

EXHIBIT C

PROPOSED CONGRESSIONAL DISTRICTS

DISTRICT 1 is composed of Bowie, Camp, Cass, Delta, Fannin, Franklin, Grayson, Harrison, Hopkins, Lamar, Marion, Morris, Rains, Red River, Rockwall, Titus, Upshur and Wood Counties; and all of Hunt County not included in the Celeste census county division.

DISTRICT 2 is composed of Angelina, Brazos, Grimes, Hardin, Houston, Jasper, Liberty, Madison, Montgomery, Newton, Orange, Polk, Robertson, Sabine, San Augustine, San Jacinot, Trinity, Tyler, and Walker Counties; and that part of Leon County included in the Centerville and Oakwood census county divisions.

DISTRICT 3 is composed of that part of the city of Richardson in the Plano census county division of Collin County, and that part of Dallas County included in census tracts 1, 2.01, 2.02, 3, 6.01, 6.02, 7.02, 9, 10, 11.01, 11.02, 12, 14, 71.01, 72, 73.01, 73.02, 74, 75.01, 75.02, 76.01, 76.02, 76.03, 76.04, 77, 78.01, 78.02, 78.03, 79.01, 79.02, 80, 81, 82, 94, 95, 96.01, 96.02, 96.03, 96.04, 97, 98, 99, 128, 129, 130.01, 130.02, 131, 132, 133, 134.01, 134.02, 135, 136.01, 136.02, 136.03, 137.01, 137.02, 137.03, 137.04, 137.05, 138.01, 138.02, 139, 140.01, 140.02, 141.01, 141.02, 141.03, 141.04, 143, 144, 145, 146, 147, 185.02, 190.02, 190.03, 190.04, 191, 192.01, 192.02, 192.03, 192.04, 192.05, 192.06, 192.07, 193.01, 193.02 194, 195.01, 195.02, 196, 197 and 198.

DISTRICT 4 is composed of Anderson, Cherokee,

Freestone, Gregg, Henderson, Kaufman, Nacogdoches, Navarro, Panola, Rusk, Shelby, Smith and Van Zandt Counties; and that part of Leon County not included in District 2.

DISTRICT 5 is composed of that part of Dallas County not included in District 3 or 24.

DISTRICT 6 is composed of Hood and Johnson Counties; and that part of Tarrant County included in census tracts 13, 14.01, 14.03, 16, 19, 23.01, 24.01, 24.02, 25, 26, 28, 29, 30, 31, 32, 33, 34, 36.01, 36.02, 37.01, 37.02, 38, 39, 40, 41, 42.01, 42.02, 43, 44, 45.01, 45.02, 45.03, 46.01, 46.02, 46.03, 46.04, 46.05, 47, 48.01, 48.02, 51, 52, 53, 54.01, 54.02, 55.01, 55.02, 55.03, 55.04, 56, 57.01, 57.02, 58, 59, 60.01, 60.02, 60.03, 61.01, 61.02, 62, 63, 64, 65.01, 65.02, 65.03, 65.04, 65.05, 108.01, 108.02, 108.03, 109, 110.01, 110.02, 111.01, 111.02, 112.01, 112.02, 113, 114, 115.01, 115.02, 115.03, 115.04, 130, 131, 216.01, 216.02, 216.03, 217.01, 217.02, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228 and 229.

DISTRICT 7 is composed of that part of Harris County included in census tracts 558, 557, 554, 553, 552, 556, 555, 551, 545, 550, 549, 548, 547, 546, 544, 537, 538, 541, 540, 452, 451, 543, 542, 529, 528, 527, 526, 519, 517, 443, 442, 441, 444, 447, 448, 450, 449, 446, 445, 440, 421, 406, 420, 422, 439, 438, 437, 436, 423, 419, 424, 435, 407, 409, 408, 411, 418, 417, 416, 425, 426, 434, 429, 428, 427, 433, 431, 432, 333, 413, 334, 536, and 430; and that part of census tract 405 included in census block group 5.

DISTRICT 8 is composed of that part of Harris County included in census tracts 559, 244, 245, 243,

242, 535, 241, 533, 240, 223, 531, 532, 222, 221, 224, 525, 524, 523, 522, 220, 218, 225, 217, 216, 215, 227, 521, 229, 228, 230, 214, 203, 209, 213, 231, 212, 202, 210, 211, 232, 233, 231, 320, 322, 350, 351, 352, 354, 234, 262, 261, 267, 268, 263, 265, 266, 270, 269, 271, 264, 361, 362, 273, 274, 272, 275, 364, 360, 363, 365, 530, 539, 534, 254 and 353.

DISTRICT 9 is composed of Chambers, Galveston and Jefferson Counties and that part of Harris County included in census tracts 250, 249, 247, 238, 251, 248, 246, 252, 253, 237, 236, 256, 255, 257, 257, 235, 259, 260, 226 and 239.

DISTRICT 10 is composed of Austin, Bastrop, Blanco, Caldwell, Fayette, Hays, Travis, and Washington Counties; that part of Guadalupe County included in the Seguin East, Seguin North, and Seguin Southwest census county divisions; that part of Lavaca County included in the Moulton and Shiner census county divisions; all of Waller County not included in the Brookshire census county division; all of Colorado County not included in the Garwood census county division; and all of Gonzales not included in the Nixon census county division.

DISTRICT 11 is composed of Bell, Bosque, Burleson, Burnett, Coryell, Falls, Hamilton, Lampasas, Lee, Limestone, McLennan, Milam, Mills, Somervell and Wiliamson Counties; that part of Brown County included in the Brookesmith census county division; and that part of San Saba County included in the San Saba North census county division.

DISTRICT 12 is composed of Cooke and Denton Counties; that part of Collin County not included in

District 3, that part of Tarrant County not included in District 6, and that part of Hunt County not included in District 1.

DISTRICT 13 is composed of Armstrong, Bailey, Briscoe, Carson, Castro, Childress, Collingworth, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Floyd, Foard, Gray, Hale, Hall, Hansford, Hardeman, Hartley, Hemphill, Hutchinson, Kent, King, Lamb, Lipscomb, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Stonewall, Swisher and Wheeler Counties; that part of Knox County not included in District 17, that part of Haskell County not included in District 17, and that part of Hockley County not included in District 19.

DISTRICT 14 is composed of Aransas, Calhoun, Jackson, Matagorda, Nueces, Refugia, San Patricio, Victoria and Wharton Counties; that part of Colorado County not included in District 10; and that part of Lavaca County not included in District 10.

DISTRICT 15 is composed of Brooks, Cameron, Duval, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kleberg, Live Oak, McMullen, Starr, Willacy, and Zapata Counties; that part of Bee County included in the Pettus-Pawnee census county division; and that part of Karnes County included in the Kenedy census county division.

DISTRICT 16 is composed of Brewster, Crane, Culberson, El Paso, Hudspeth, Jeff Davis, Loving, Pecos, Presidio, Reeves, Terrell, Val Verde, Ward, and Winkler Counties.

DISTRICT 17 is composed of Archer, Baylor, Cal-

lahan, Clay, Comanche, Eastland, Erath, Jack, Jones, Montague, Palo Pinto, Parker, Sheckelford, Stephens, Taylor, Throckmorton, Wichita, Wilbarger, Wise and Young Counties; that part of Haskell County included in the Hasket and Weinert census county divisions, and that part of Knox County included in the Goree census county division.

DISTRICT 18 is composed of that part of Harris County not included in District 7 or 8 or 9 or 22.

DISTRICT 19 is composed of Andrews, Borden, Cochran, Dawson, Ector, Gaines, Garza, Howard, Lubbock, Lynn, Martin, Midland, Terry, Upton and Yoakum Counties; and that part of Hockley County included in the Ropesville census county division.

DISTRICT 20 is composed of that part of Bexar County included in census tracts 1106, 1107, 1203, 1204, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1218, 1219, 1601, 1604, 1605, 1606, 1607, 1614, 1615, 1616, 1617, 1618, 1619, 1701, 1702, 1703, 1704, 1705, 1706, 1707, 1708, 1709, 1710, 1711, 1712, 1713, 1714, 1715, 1716, 1717, 1718, 1719, 1720, 1801, 1802, 1803, 1804, 1805, 1806, 1807, 1808, 1809, 1810, 1811, 1812, 1813, 1814, 1815, 1816, 1817, 1818, 1819, 1820, 1821, 1901, 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916 and 1917.

DISTRICT 21 is composed of Bandera, Coke, Coleman, Comal, Concho, Crockett, Dimmit, Edwards, Fisher, Frio, Gillespie, Glasscock, Irion, Kendall, Kerr, Kimble, Kinney, LaSalle, Llano, Mason, Maverick, McCulloch, Medina, Menard, Mitchell, Nolan, Reagan, Real, Runnels, Schleicher, Scurry, Sterling, Sutton, Tom Green, Uvalde, Webb and Zavala Counties; that

part of Brown County not include in District 11, that part of San Saba County not included in District 11 and that part of Atacosa County not included in District 23.

DISTRICT 22 is composed of Brazoria and Fort Bend Counties; that part of Waller County not included in District 10; and that part of Harris County included in census tracts 412, 414, 415, 331, 332, 329, 366, 339, 340, 335, 338, 336, 337, 341, 343, 342, 319, 325, 326, 324, 410, 355, 356, 349, 357, 358, 348, 359, 347, 346, 345, 370, 367, 369, 368, 373, 374, 371, 372, 375, 327, 323 and 344.

DISTRICT 23 is composed of Dewitt, Goliad and Wilson Counties; that part of Bee County not included in District 15; that part of Karnes County not included in District 15; that part of Guadalupe County not included in District 10; that part of Atacosa County included in the Poteet census county division; that part of Gonzales County not included in District 10; and that part of Bexar County not included in District 20.

DISTRICT 24 is composed of Ellis and Hill Counties and that part of Dallas County included in census tracts 4.01, 4.02, 4.03, 5, 7.01, 20, 41, 42, 43, 44, 45, 46, 47, 48, 50, 51, 52, 53, 54, 56, 57, 59.01, 59.02, 60.01, 60.02, 61, 62, 63.01, 63.02, 64, 65, 67, 68, 69, 71.02, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111.01, 111.02, 112, 113, 148, 149, 150, 151, 152, 153.01, 153.02, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165.01, 165.02, 165.03, 165.04, 165.05, 166.01, 166.02, 166.03, 166.04, 167.01, 168, 169.01, 169.02, 169.03, 169.04 and 199.

(Title Omitted in printing)

STIPULATIONS

[Filed, January 19, 1972]

It is agreed and stipulated by and between the counsel for Plaintiffs and counsel for Defendant as follows:

1. That if CLYDE HAYNES were present in court and under oath, he would and could testify that he is and was during the regular and special sessions of the 62nd Legislature of the State of Texas a resident of Vidor in Orange County, Texas and was the duly elected representative for House District #8.

2. That if CHARLES WILSON were present in court and under oath, he would and could testify that he is and was during the regular and special sessions of the 62nd Legislature of the State of Texas a resident of Lufkin in Angelina County, Texas and was the duly elected representative for Senatorial District #3.

3. That these stipulations may be offered in evidence for all purposes upon the trial hereof.

IT IS SO AGREED and STIPULATED this 19th day of January, 1972.

Respectfully submitted,
FISCHMAN, ROSENBERG, KASMIR & PRESTON

By _____
Lawrence Fischman

601 Kirby Building
1509 Main Street
Dallas, Texas 75201 744-5511
Attorneys for Plaintiffs
CRAWFORD MARTIN,
Attorney General

By _____
James Quick
Attorneys for Defendant

(Title Omitted in printing)

MOTION TO INTERVENE AS PLAINTIFF

[Filed, January 20, 1972]

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now VAN HENRY ARCHER, JR., individually and as Chairman of the Bexar County Republican Party, M. O. TURNER, MRS. LOIS WHITE, RICHARDSON B. GILL, MRS. MARY LOUISE PINO and MRS. MARY MARTIN JACKSON, hereinafter styled Plaintiff-Interveners, on behalf of themselves and others similarly situated, comprising the class, and move for leave to intervene as a Plaintiff as provided for in Rule 24 (a.) and (b.) of the Federal Rules of Civil Procedure, in order to assert the claim set forth in their proposed complaint, of which a copy is hereto attached, on the grounds that the representation of the Applicants' interests by existing parties is, or may be, inadequate and the Aplicant is, or may be, bound by a judgment in the action.

NATHAN W. EASON

J. DOUGLAS MCGUIRE
400 Alamo National Building
San Antonio, Texas 78205
Attorneys for
Van Henry Archer, Jr.,
individually and as Chairman
of the Bexar County Republican
Party, et al
Applicants for Intervention

(Title Omitted in printing)

COMPLAINT IN INTERVENTION

[Filed, January 22, 1972]

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes VAN HENRY ARCHER, JR., individually and as Chairman of the Bexar County Republican Party, M. O. TURNER, MRS. LOIS WHITE, RICHARDSON B. GILL, MRS. MARY LOUISE PINO and MRS. MARY MARTIN JACKSON, hereinafter styled Plaintiff-Interveners, on behalf of themselves and others similarly situated, comprising the class hereinafter defined, and complaining of the HONORABLE BOB BULLOCK, in his capacity as Secretary of State of the State of Texas, hereinafter called Defendant, would, for cause of action, respectfully show:

I.

PLAINTIFF-INTERVENERS

(1.) Plaintiff-Intervener, VAN HENRY ARCHER, JR., is a resident of the State of Texas and resides in the County of Bexar in said state at 218 West Lynwood Avenue, San Antonio, Texas, and is a duly registered and qualified voter in said county and state. The aforesaid Plaintiff-Intervener is the duly elected Chairman of the Bexar County Republican Party, a political party existing under and by virtue of the laws of the State of Texas.

(2.) The Plaintiff-Intervener, M. O. TURNER, is a resident of the State of Texas and resides in the

County of Bexar in said state, with address at 109 Laburnum, San Antonio, Texas, and is a duly registered and qualified voter.

(3.) The Plaintiff-Intervener, MRS. LOIS WHITE, is a resident of the State of Texas and resides in the County of Bexar in said state, with address at 1302 Dawson Street, San Antonio, Texas, in said county, and is a duly registered and qualified voter.

(4.) The Plaintiff-Intervener, RICHARDSON B. GILL, is a resident of the State of Texas and resides in the County of Bexar in said state, with address at 309 Encino, San Antonio, Texas, in said county, and is a duly registered and qualified voter.

(5.) The Plaintiff-Intervener, MRS. MARY LOUISE PINO, is a resident of the State of Texas and resides in the County of Bexar in said state, with address at 400 South Mesquite, San Antonio, Texas, in said county, and is a duly registered and qualified voter.

(6.) The Plaintiff-Intervener, MRS. MARY MORTON JACKSON, is a resident of the State of Texas and resides in the County of Bexar in said state, with address at 311 South St. Mary's Street, San Antonio, Texas, in said county, and is a duly registered and qualified voter.

II.

CLASS ACTION

Plaintiff-Interveners brings this action on their own behalf, and pursuant to Rule 23 of the Federal Rules

of Civil Procedure, on behalf of all other persons similarly situated. The members of the class similarly situated are all those individuals who are duly qualified and registered voters of the State of Texas who reside in Bexar County, and are qualified and duly registered to vote in United States Congressional Districts 20, 21 & 23 in elections for the United States House of Representatives in said districts. The requirements of Rule 23 are met in that the class is so numerous that joinder of all members is impractical; there are questions of law or fact common to the class; the claims of the representative party are typical of the claims of the class; the representative parties will fairly and adequately protect the interest of the class; and the parties opposing the class have acted on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

The Defendant, BOB BULLOCK, is the duly qualified and acting Secretary of State of the State of Texas. That by the provisions of Article 1.03 of the Texas Election Code (Acts. 60th Leg., Ch. 723, p. 1860 §3, 1967) he is, by virtue of his office, the chief election officer of the State of Texas and is charged with the duly, inter alia, of ". . . obtain(ing) and maintain(ing) uniformity in the application, operation and interpretation of the election laws." Said Defendant may be served at his offices in the State Capitol Building in Austin, Texas.

That pursuant to the provisions of 28 U.S.C. §2284, Notice of hearings in this suit must be given to the HONORABLE PRESTON SMITH, Governor of the State of Texas, at his office or official residence in Austin, Texas, and to the HONORABLE CRAWFORD

MARTIN, Attorney General of the State of Texas, at his office in Austin, Texas.

III.

JURISDICTION

Plaintiff-Interveners, on behalf of themselves and others similarly situated, sue to have the Texas statute establishing congressional districts for the State of Texas (S.B. 1, Acts 62nd Leg., 1971) declared violative of Article 1 §2 of the United States Constitution and of the XIVth Amendment, §§ 1 & 2 to the United States Constitution, and to enjoin its enforcement and the conduct of elections thereunder. Thus, this Court has jurisdiction, sitting as a three-judge Court under Title 28 of the U. S. Code, §1343 and §2281.

IV.

Plaintiff-Interveners adopt all of paragraph III. of Plaintiff's Amended Complaint, including Exhibit A for reference, with the exception of sub-paragraphs H., I., J. and K., to all intent and purposes as if the same were copied in these pleadings verbatim.

V.

Plaintiff-Interveners adopt all of paragraph IV. of Plaintiff's Amended Complaint, except the last sentence of sub-paragraphs A. and B., as if the same were copied in these pleadings verbatim.

VI.

Plaintiff-Interveners adopt all of Paragraph V. of

Plaintiff's Amended Complaint, except that portion of paragraph III., to-wit: H., I., J. and K., as if the same were copied in these pleadings verbatim.

VII.

Plaintiff-Interveners adopt all of the allegations of paragraph VI. of Plaintiff's Amended Complaint, except sub-paragraph 8., as if the same were copied in these pleadings verbatim.

VIII.

That Plaintiff-Interveners further allege that S.B. 1 affects the voters in Districts 20, 21 and 23 as presently constituted, and that in Congressional Districts 21 and 23, which are combined with various outlying counties, the voters of said districts have, by this plan, been denied equal participation in the political processes and such plan tends to cancel out or dilute their votes. Further, that Congressional Districts 21 and 23 of S.B. 1 lack the constitutional requirements of compactness and community of interest between the various voters of such districts.

That S.B. 1 as drawn and passed in effect gives a "safe district" to the present incumbent congressman in Congressional District 20 by creating such district from the core of Bexar County which, in effect, causes the overage to be then placed within Congressional Districts 21 and 23. That said plan thereby leaves Bexar County, with a population of 830,000 plus, with only one congressman when, in fact, had the legislature followed the proper constitutional guidelines, Bexar County would, in all probability, elect two United States Congressmen. The total effect of said

plan then is depriving the whole of Bexar County of proper congressional representation and particularly those areas of Bexar County placed in Congressional Districts 21 and 23 by S.B. 1.

That Plaintiff-Interveners herein submit herewith a Congressional Redistricting Plan, Exhibit A-1, if this Court finds Senate Bill 1 unconstitutional, which we feel is a fair, equitable and just plan. Unlike the other plans submitted by Plaintiffs herein (Plaintiff's Exhibits B and C), and unlike Senate Bill 1, Plaintiff-Interveners' plan does not cross any county lines in the state except the necessary division of the metropolitan areas containing more population than necessary to elect one congressman. Plaintiff-Interveners' plan allows for a deviation of only two per cent and that said plan is offered to the Court for consideration by the Court if S.B. 1 should be declared unconstitutional in hopes of the Court's adoption of said plan or aiding in the redrafting of a Constitutional Plan.

ADDITION TO PRAYER

That in addition those portions of the prayer (paragraph VI.) adopted by Plaintiff-Interveners herein from Plaintiff's Amended Complaint, Plaintiff-Interveners pray that Congressional Districts 20, 21 and 23, as contained in the plan submitted by Plaintiff-Interveners, be adopted by this Court and, if not adopted, be considered by this Court in its redrafting of S.B. 1, which is the subject matter of this lawsuit.

Respectfully submitted,

NATHAN W. EASON

J. DOUGLAS MCGUIRE
400 Alamo National Building
San Antonio, Texas 78205
Attorneys for
Plaintiff-Interveners

[Attachments to this pleading omitted and not relevant to this appeal]

(Title Omitted in printing)

PRE-TRIAL ORDER

[Filed, January 24, 1972; signed, January 21, 1972]

On the 7th day of December, 1971, and again on the 14th day of January, 1972, pursuant to an Order of the Court, a pretrial conference was held in the above styled and numbered cause before the undersigned Judge at Dallas, Texas.

Appearing for the Plaintiffs was the firm of FISCHMAN, ROSENBERG, KASMIR & PRESTON, of Dallas, Texas, by Messrs. LAWRENCE FISCHMAN and DAVID H. ROSENBERG. Appearing for the Defendant was the Honorable CRAWFORD MARTIN, Attorney General of the State of Texas by Messrs. JAMES QUICK and SAM McDANIEL.

Based upon the pleadings, depositions, briefs and arguments of counsel at said pre-trial conference, it is ORDERED AND DETERMINED:

(1) PLAINTIFFS' CLAIMS:

(a) Plaintiffs claim that the congressional districts established by S.B. 1 are not as compact, contiguous and as nearly equal in population as is practicable; and, therefore, said statute violates on its face Article 1 §2 of the United States Constitution. Thus, Plaintiffs contend, that they and others similarly situated are deprived of their constitutional rights to have their vote count for as much as every other voter.

(b) Plaintiffs contend that the legislature, by

enacting S.B. 1, did not make a good faith effort to establishd districts which meet the requirements of Article 1 §2 of the United States Constitution that such districts be as compact, contiguous and as nearly equal in population as is practicable.

(2) DEFENDANT'S DEFENSES:

(a) The Defendant contends that the congressional districts established by S.B. 1 are as compact, contiguous and numerically equal as practicable, representing a good faith effort on the part of the 62nd Legislature of the State of Texas to comply with the requirements of Article 1 §2 of the United States Constitution.

(b) The Defendant further contends that such deviations as are found in S.B. 1 are constitutionally permissible as a practical systematic allowance for the growth and decline of populations within the 24 congressional districts in Texas.

(3) CONTESTED ISSUES OF LAW:

(a) In drawing a plan of congressional redistricting, can the legislature consider as a factor the minimizing of one incumbent congressman having to run against another? If so, to what extent?

(b) In drawing a plan of congressional redistricting, can the legislature consider "social", "economic" and "cultural" factors? If so, to what extent?

(c) In drawing a plan of congressional redis-

tricting, to what extent may the legislature consider geo-political boundaries?

(4) That a trial on the merits of this cause will be held on January 21, 1972.

(5) IT IS ORDERED, ADJUDGED AND DECREED that this action be heard before a three (3) judge court pursuant to 28 U.S.C. §2281.

(6) IT IS ORDERED, ADJUDGED AND DECREED that the Defendant's demand for a jury trial be, and the same is hereby, denied.

(7) It appearing to the Court that the Plaintiffs have brought this suit as a class action under Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and all other qualified voters, registered and unregistered, within the several districts wherein the respective individual Plaintiffs reside, as well as all other qualified voters in all other congressional districts in the State of Texas; and it further appearing to the Court that the number of persons comprising the class so defined is so numerous as to make it impossible to bring them before the Court; and it further appearing that the Plaintiffs, as qualified and registered voters, are fairly representative of the class as so defined; it is, therefore, ORDERED, ADJUDGED AND DECREED that this action is properly brought by the Plaintiffs as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure and may proceed and be prosecuted as such.

(8) It is ORDERED that this case shall be tried on the pleadings, depositions, exhibits, agreed testimony, affidavit(s), and stipulations.

(9) It is ORDERED that each side shall have one hour of oral argument before the Court; with Plaintiff to have forty (40) minutes to open and twenty (20) minutes for rebuttal.

(10) It is ORDERED that the following exhibits be, and they are hereby, admitted into evidence for all purposes: Plaintiffs' Exhibit 1, 1-A, 1-B; 2, 2-A, 2-B; 3, 3-A, 3-B; 4, 4-A; 5, 5-A, 5-B; 6, 6-A, 6-B; 7; and 8; Defendant's Exhibit 1; 2, 2-A, 2-B; and 3.

(1) It is agreed by counsel for both parties, and so Ordered by the Court, that all depositions taken or to be taken herein may be filed without the signature of the witness, with the same force and effect as though all prerequisites and formalities had been complied with.

(12) The Court finds and determines that it has jurisdiction of the parties and of the subject matter of this suit.

DATED at Dallas, Texas, this 21st day of January, 1972.

s / _____
ROBERT M. HILL
United States District Judge

Approved:
FISCHMAN, ROSENBERG, KASMIR & PRESTON
601 Kirby Building
1509 Main Street
Dallas, Texas 75201
744-5511

By: _____
Lawrence Fischman

Attorneys for Plaintiffs
CRAWFORD MARTIN, Attorney General
State of Texas

By: _____
James Quick
Assistant Attorney General
Attorneys for Defendant

Oral Deposition of

Gus Franklin Mutscher

(P. 2)

ANSWERS AND DEPOSITION of GUS FRANKLIN MUTSCHER, a witness produced on behalf of the Plaintiffs, taken in the above styled and numbered cause on the 1st day of December, A.D., 1971, before JAN STROUD, a Notary Public and certified shorthand reporter in and for Dallas County, Texas, in the offices of CLAYTON, FRIDAY, FRIEDMAN AND BURROUGS located at 900 West Avenue, in the City of Austin, County of Travis and State of Texas, in accordance with the agreement hereinafter set forth.

* * *

(P. 21)

BY MR. FISCHMAN:

Q Did you also invite inquiry or comment by any incumbent congressman or any member of the staff of an incumbent congressman?

A My chairman would be in a much better position to testify to that rather than myself. I don't remember it as one of my guidelines. I think I may on a visit with a congressman, or whether in Washington or through a letter of my staff, may have mentioned to them that this would be a major problem in the sense of the Legislature and if they had any feelings or any of their friends who were constituents of theirs had any feelings, we would certainly welcome any comments that they would like to make concerning reapportionment.

* * *

(P. 23)

Q Are you aware, Mr. Speaker, of any other ef-

forts on the part of the committee to ascertain the views of the incumbent congressional delegation or incumbent members of the delegation, I should say?

A Yes, I think that we had a chairman and several members of his subcommittee, may have had a—a—had a trip to Washington and probably attended the Texas luncheon, delegation luncheons that they frequently have and this gave them an opportunity to talk about redistricting, gave them an opportunity to submit some of their ideas and their plans.

Q Well, in point of fact, Mr. Speaker, that was the purpose of the trip, was it not, to meet with the congressional delegation and ascertain their views on how possibly the district should be drawn?

A I think that's—I think that's the way Chairman Jones has stated it and I don't know who went. I don't recall who went with him, but I do know that they—

(P. 24)

Q Did Chairman Jones report to you after that trip to tell you, whether officially or unofficially, what transpired?

A No more than the, that I recall, the general statement that the—that most of the members of Congress were pleased with an opportunity to present their feelings and that many of the congressmen were going to spend some time in assisting and trying to draft proposals as to how their recommendations might run.

Q Now, Mr. Speaker, do you recall, other than the statement that you alluded to awhile ago, the challenge that you gave to the committee, giving them any other instructions on what factors, if any, they were to consider in drawing the congressional districts?

A I don't think I reduced anything to writing in the form of any statement or addressed them any other time in the committee as a whole than at its

opening meeting. I have always felt that—and could very easily have mentioned to some of the committee members—that community of interests should be a factor, compactness, trying to minimize the crossing of county lines, but—

* * *

(P. 25)

Q The three that you listed, that is, community of interests, compactness and attempting, insofar as possible, to maintain the integrity of county lines?

A That is correct. And of course, always keeping in mind that number one was the federal case law in one man, one vote and the—and the tolerance factor.

* * *

(P. 31)

Q Now, you have already indicated to me, Mr. Speaker, that you have studied the applicable federal cases and that you have had considerable experience in the problems of redistricting because of your prior service. And based on your knowledge and experience, Mr. Speaker, would you tell me what you meant when you referred to this tolerance factor awhile ago as being one of the elements that you may have informally communicated to members of the committee that they should consider in drafting the bill?

A Well, when the emphasis was placed on one man, one vote, the tolerance factor, the way I see it, is—is the grouping of congressional districts or the forming of congressional districts all of basically the same size on a population basis with only slight deviations. And that deviation,

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of course, is referred to as a tolerance factor, because from a legislative point of view, it seems to be impractical or impossible to make them all of the—of the same number.

* * *

(P. 34)

Q Do you know what constitutes a reasonable tolerance?

A I don't—I couldn't reduce it to an exact figure, no, sir.

Q And to the best of your knowledge—excuse me. Go ahead, Sir.

A Well, I have in mind that we have studied cases maybe where the—where there's six per cent deviation and the courts may have upheld that case. So we may can presume from that point of view that this would be an acceptable tolerance mark. But here again, this could shift, so I don't—I don't know. I don't want to

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pinpoint it to a figure, because I don't know of one.

Q Was this, also, your view, Sir, during the session of the Legislature just passed, that you have just articulated to me?

A Yes, sir.

Q And did you also make this view known to the members of the committee and to the members of the House, either officially or on an informal basis?

A Yes. This would reflect my feeling.

Q And would it be your understanding that this, except for one or two or possibly more exceptions, would this have generally been understood by the House to have been a correct application of the law?

A That is correct.

Q Would one of the factors, Mr. Speaker, that would be considered validly in re-apportionment be maintenance of the integrity of existing districts insofar as possible?

A This point has been mentioned.

Q By whom, Sir?

A I have heard it argued by House members on

the floor of the House. I have heard

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some committee members make reference to it. I don't think it was given any priority as high as any of the other points that I previously mentioned.

Q Well, what I have said was a euphemistic way of saying that it was the desire or consensus of the House, so far as you knew, that you wanted to preserve the districts of all incumbents; was that not a factor?

A I would say it had to be—it was a factor that—a factor that was considered, yes.

Q Would you say that these factors were considered in different degrees of importance or were they all considered pretty much on an equal plane?

A I wasn't really that close to the drafting of the plan, so I—I—I really can't testify as to the mag—the strength that each one of these elements was given by the—by the committee.

* * *

(P. 40)

Q I'm going to ask the question another way. One of the factors, Mr. Speaker, that was considered was to prevent, as much as possible, the pitting of one incumbent against another, is that correct?

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* * *

A Yes, that is correct.

* * *

Q (continuing by Mr. Fischman) It was an important enough factor, wasn't it, Mr. Speaker, for Chairman Jones and some other members of the committee to make a special trip to Washington; I believe we have already established that, haven't we?

(P. 42)

A That is correct.

* * *

(P. 43)

Q You indicated awhile ago, Mr. Speaker, that you didn't have much personal knowledge of how the bills were actually drafted; is that correct?

A Well, I was under the impression

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from some degree of experience that congressional re-apportionment would be drawn by—by a conference committee. The pattern under the rules of the House, the House draws, generally, it's the House redistricting. In the Senate, it's the—. The House draws the House redistricting bill. The Senate generally drafts the Senate re-apportionment. And the congressional bill is generally a conference report, because the Senate will usually draw one version and the House will draw another version. It's just the practical aspect of the process.

Q Would you elaborate on that a little bit further, Mr. Speaker?

A Sure. I—during the regular session, the Texas House of Representatives, if I recall correctly, passed the first congressional re-apportionment plan. It was a lengthy debate. I don't think there was any cut-off of amendments. Each House member had an opportunity to present his or her plan. And we passed a congressional re-apportionment plan that went to the Senate. The Senate amended the House version and the House did not accept the Senate version and it was moved for an appointment of a conference committee and this was done. I appointed five

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conferees. The Lieutenant Governor appointed five conferees. But they did not complete their work in the first regular session. So congressional redistricting was one of the items to consider in the first called spe-

cial session.

And here again, the Senate passed a version that we amended. We went to conference. And the bill that was finally passed by both houses was a plan that was signed by the conference members.

* * *

A No, sir. To one—one qualifying extent. It was one time when the House conferees and Senate conferees seemed to be on a complete deadlock and the Lieutenant Governor had met with the conferees and I was called to visit with the conferees and try to resolve a practical problem; that does exist in conference. And this was resolved and then the conferees resumed their work.

Q What was that, Sir?

A It was probably the more publicized adjusting of counties in the East Texas area. It

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was a practical situation that existed. I had Clyde Haynes, who was my chairman of labor, from Orange, was one of my conferees. The Lieutenant Governor had Senator Wilson, Senator Patman, Senator Hall and Senator Jordan and all four of those was over in this East Texas area. And they had one version and Clyde Haynes had—Representative Haynes, excuse me, had aonther version. And they seemed to have got a—the conferees became locked on this issue. And it was merely a moving of a county of twenty thousand in one area into it and taking them out in another area.

Q What was the importance of that that it ground this whole thing to a halt, as it were?

A I would only term it as some of the practical aspects you face in redistricting.

Q What would that be, Sir?

A Elected representatives from the same area

having a practical different view on how the line should be drawn.

Q Well, do you recall what the competing—

A Well, the publicized incident was that you had some three or four members who was interested in possibly running for Congress.

(P. 47)

Q Would you tie that down specifically, Sir, if you recall?

A Well, I don't ever like to announce for any other candidate and I don't know if it was right to even publicize then that they were planning on being candidates. It did cause a little legislative hassle at the time. I think since then, Senator Jordan has announced. I think Senator Wilson has announced. Representative Clyde Haynes has not. And so this was some of the practical aspects of it.

* * *

(P. 50)

Q And is it your testimony here today, Sir, that those deviations could not possibly have been avoided?

A The—the—the approach to redistricting determines as to what can be avoided.

(P. 51)

I would say that it is my feeling that the conferees signed a bill where the tolerances were supported by good reasons or they had reasons for their deviations

* * *

(P. 53)

Q If I understand you correctly, Mr. Speaker, while you concede that it would have been theoretically possible to draw the congressional districts to be more mathematically equal than the

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bill that actually came out, you feel that the bill that was passed was the closest that could possibly be done

considering its various other factors?

A I think—yes, sir. And I think the House bill was tighter in tolerance in the final draft than it was reported out of the conference committee.

Q What, how come the House, then, I don't know, it's kind of a hard question, but then the House subsequently adopted the bill that came out of the conference commitee, did they not?

A Yes, sir.

Q Why, why did they go with this bill with looser tolerance?

A Well, it's—it's—it's difficult to say in words. But from a practical point of view, it's having to deal with additional people and the satisfying of more people. It—it does seem to have some more loosening of the tolerance effect than the tightening aspect of it.

* * *

(P. 57)

Q Did anybody examine these bills before they were, you know, check them for typographical errors?

A Yes, sir. We have several staffs that do work on them, but you pretty well have to experience the working conditions to want to defend and appreciate the work that is done that—

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that comes out on these projects.

Q Well, what, would you elaborate on that answer?

A Well, I do to this extent, I—I think it's—it's easy to make an issue out of an error and rightly so, sometime, because of its magnitude and its effect on the final version of the bill. But then at the same time, well, you may be fighting the fact that the author has to get his bill up on a certain calendar day of the week or else it will carry over into the next week. When you stop and think that the staff is—the final draft is getting down to a point where they have to work and kind

of eliminate some of the conversations and the arguments that go on around a conference table. And sometimes, there are—there's a last minute compromise change and this has to be implemented and one of the staff people might overlook it or something. I think there's—there's some real administrative assignments that must be carried out. And as presiding officer, I'm always of the type that before I criticize one of my staff members I would share the responsibility myself. And there's lots of room and desire to be improved in the legislative process, but it's the

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staff members that we have and still do a wonderful job in my mind.

* * *

Q In other words, if I understand you correctly, Mr. Speaker, and far be it from me to put words in your mouth, what you're saying is that mistakes can happen when you're operating under the pressure such as the Legislature operates under?

A That's right.

Q There are deadlines and crowded calendars and what-have-you?

A That's right.

* * *

Q Was there ever an effort made to your knowledge to achieve absolute mathematical equality?

A I think, here again, that the conferees tried to draw the bill as tight as they possibly could to the average of four hundre dand sixty-six thousand or what the average number might be, but we have to acknowledge that there would be tolerances and that the tolerances could be justified.

Q To your knowledge, Mr. Speaker, was there any factor in this tolerance equation based on projected population changes?

A Not to my knowledge. I—I—I take it—I'll qualify it to this extent. I did hear conferees in one area say, "Well, from

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statistics, this appears to be a growing part of Texas—

Q What is this that you're referring to?

A —where this other one appears to be a declining area." I think this was probably made to justify some of the wider-spread tolerances that may have existed in the so-called non-metropolitan congressional districts.

Q Can you refer to any specific district or—

A I would have to have—

Q —geographic area? Would it help you to refer to a map, Mr. Speaker?

A Well, I—I think you pretty well have to take the counties. I think it was—it might be mentioned that the, say, the trend in Harris County looked like they were growing much faster than they may be in San Angelo or Abilene, for example.

Q Well, how was this—

A But our population—

Q Well, let me ask this question: How did the population projections figure into the equation; was a district intentionally underpopulated in order to allow for growth in the future or

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exactly what was done, if you know?

A To the best of my knowledge, I think that they, in—in attempting to draw the bill with one man, one vote and come as close to it as they possibly could, and then when there was some deviation or some need for having a wider spread, they would look at this projected population pattern. But as to the exact districts, I'm not—I'm not aware and I—

Q Art you saying, Mr. Speaker, that these justifi-

cations came ex post facto?

A I—I think it came as a—I don't think the bill was drawn definitely with that as a—as a—as a main element. I think when you—when the lawmakers found that they had reached a blockage area, so to speak, in drafting redistricting, that they had to take into consideration all factors. And then of course, they took the population growth factor into consideration.

The members of my committee would be more articulate on that element than I would be. And I—I don't want to be speaking for someone else.

* * *

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Q (continuing by Mr. Fischman) What population figures were utilized in the drafting of the House bills, to your knowledge?

A The House congressional redistricting bill?

Q Yes, sir.

A To the best of my knowledge they were using the—the latest figures put out by the federal census bureau.

Q Were there any figures on voter registration or anything else other than raw population used?

A I'm sorry. I couldn't—I don't know.

Q Would the same be true to your knowledge of the conference committee bill?

A To my knowledge, yes.

Q In the press release, Mr. Speaker, that was introduced as Plaintiff's Exhibit—offered as Plaintiff's Exhibit Number One, you use the word "geographic needs"; by that, you

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meant preservation of county lines as much as possible?

* * *

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BY MR. BAILEY:

Q Mr. Speaker, would it be a correct summation or not of what you have said that what you hoped and charged the members of the Legislature with was to come up with a bill that, first, came as near to being mathematically equal for one man, one vote as they could get and to also take into consideration, I believe, the other factors that you have enumerated, such as compactness, community

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of interests and cutting as few county lines as possible, that this is what you charged your committee and hoped the Legislature would come up with in the way of a congressional redistricting bill?

A That is correct. The only other element that would be—right after one man, one vote, the federal case law—would be awareness of our own state constitution and then the elements that you have mentioned.

* * *

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MR. FISCHMAN:

Q In response to Counsel's question that the committee tried to draw—I'm paraphrasing now—the committee tried to or the Legislature tried to draw the bill as mathematically equal as possible. And then except for certain factors, he enumerated several factors, but he did leave out the factor of preserving the integrity of existing districts, which, I believe, you testified was one of the considerations, is that

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right?

A I didn't—I didn't mean to change my position from what I previously stated on that. I did state it as a factor.

* * *

Q And it's, I believe, your testimony and I think

the record will show that the bill that was enrolled by the House could not get through the Senate or did not get through the Senate?

A Did not get through the Senate.

Q Was there any substantial effort made to get it through?

A No, there was—there wasn't any lobbying on my part with the Senate as in respect to the House bill and I don't think it would have been expected or right for us to do so.

Q Well, did you ever confer with the Lieutenant Governor in regard to congressional

Oral Deposition of

Ben Barnes

ANSWERS AND DEPOSITION of BEN BARNES, a witness produced on behalf of the Plaintiffs, taken in the above styled and numbered cause on the 3rd day of December, A.D., 1971, before JAN STROUD, a Notary Public in and for Dallas County, Texas, in the offices of CLAYTON, FRIDAY, FRIEDMAN AND BURROUGHS located at 900 West Avenue, in the City of Austin, County of Travis and State of Texas, in accordance with the agreement hereinafter set forth.

* * *

(P. 5)

DIRECT EXAMINATION

BY MR. FISCHMAN:

* * *

(P. 7)

Q We'll get it there. That's all right. Did you give any instructions or charge, as it were, to Senator Word or the entire committee at the regular session?

A No. I—I—I gave no charge to them. Informal discussion with my—my committee chairman, Senator Word, I had great confidence in him and the other members I appointed, Senator Word being a lawyer and having had experience with redistricting bills in the past, I said, "We want to get as good a bill, constitutional bill, as we possibly can."

Q You were aware, then, of a certain amount of difficulty in arriving at that because of the various federal court cases involving redistricting, were you not?

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A Yes. But I had—I had faith that we could draw

a constitutional bill. It's—it's difficult to get any bill passed through the legislature on re—any redistricting.

Q Why is that, Governor, based on your experience in the Legislature?

A Oh, I think that members of the—members of the Legislature have an unfortunate situation in Texas that they don't have annual sessions of the Legislature. They need more—they—they need more time to spend on their legislative duties. Three thousand bills in one session is too many bills to consider.

Q Well, there are other factors than that and we're discussing, particularly, the matter of redistricting, are we not?

A Well, I think redistricting in Texas, as in other states, has become more difficult because of the shift from rural to urban and the fast-growing areas makes it more difficult, yes.

Q Governor, in all candor, it's a matter of politics, isn't it?

A No, I don't think that—that redistricting is any more a matter of politics than a lot of other issues that are settled in

(P. 9)

legislative bodies. I think it's—I think it's—it's very easy to call any—anything before the Legislature, any decision they make is political, but I think it might—the men I appointed, the men and women I appointed did—did the best job that—that they—that they could. And I—I—I think Senator Word is probably the least or the most non-political man in the Senate, as far as the chairman.

Q I want to get into that a little bit later, but I would like for you to tell me, first, are you aware, as I understand, Senator Word introduced a bill within the first sixty calendar days of the session just as a

basic working bill that they could progress from, were you aware of what criteria the committee considered in drafting that bill or in drafting any of the subsequent proposals or the bill that was finally passed by the Senate in its regular session?

A Well, in all candor, I'm probably—I'm probably not familiar with the criteria. I never discussed with Senator Word exact what criteria. I read in the newspapers what people always say about compactness of districts and—and community of interests and other phrases that

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the courts have—have written in various and sundry decisions, but I had faith and confidence in—in the job that he was doing, but that—there were no guidelines I laid down nor—nor did I discuss with them what—what—exact what criteria they should follow.

Q Governor, as I read the newspapers, the newspapers report that on more than one occasion you expressed—I'm trying to choose my words carefully and if I don't, why, you use yours—

A Okay.

Q —expressed some concern about trying to minimize the possibility of one incumbent congressman having to run against another; do you recall ever making such an expression?

A Well, I think on—I think, certainly, that I made statements that we hoped that—that we could or that I felt like the seniority in Congress, both Democrat and Republican, were assets of our—of our state. I think that's what you're referring to and that would fit in with what you just asked.

Q Well, it's true, is it not, that this was one of the criteria that was considered by Senator Word and by the rest of the committee?

A I think every member of the Legislature

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is under a great deal of pressure from his constituents to—to keep their county in—in a congressional district that's community of interests or keep their county in—in with the surrounding counties. And certainly, that there was a great deal of political pressure from the people of Texas from various and sundry interested groups about what congressional district that particular section of the country was going to be in or whose congressional district that particular section of the state was going to be in.

Q Well, one of the groups to which you allude in your answer to my last question, would that have been the incumbent congressmen, themselves?

A Well, I'm sure that the incumbent congressmen were very interested in their individual districts. Incumbent congressmen were—would be very hesitant to talk to me specifically about, "Well, look, this is—I want my district like this." Maybe—maybe in talking to their own individual House member or senator they would, but—

Q Well, did any of them actually

(P. 12)

overcome their reticence and discuss it with you?

A Well, other than every time I would see them, "Well, how are you all coming on congressional redistricting? When are we going to get a bill?" I mean, this type of thing. Or, "I know you—you know I'm your friend." The—the normal statements that you would hear and would—and would expect to hear.

Q You used the word "pressure" a moment ago. While this might not have been pressure on you, per se, since you are elected by the state, by the people of the state at large, would this, to your thinking, constitute a pressure on particular representatives from a given congressional district?

A Well, I'm sure the people in—in Comanche and Brown County, my two home counties, wrote, contacted their House member and their senator and—and told them that they wanted to remain in—in the Seventeenth Congressional District, those that contacted them on congressional redistricting. Maybe some contacted them and said we didn't want to, but I would be surprised. I'm—I'm sure that ninety per cent of the contacts they had were from their constituents in their district

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wanting to stay in that particular congressional district. And I'm sure every other House member and Senator falls into that exact category. I mean, probably three hundred Chamber of Commerces passed resolutions and sent to the Legislature wanting their particular city in some particular district.

Q To your knowledge, Governor, did any incumbent congressman, either in person or through a member of his staff or an interested intermediary, ever submit a proposed district for himself?

A I really don't know. I—the members of the committee would know that, but—but I really don't know.

Q Were you aware, Governor, of the fact that a number of senators and members of the House that were concerned with congressional redistricting made a trip to Washington to discuss the matter with the congressional delegation?

A Yes, I was aware that the House committee. I think that Governor Smith's plane carried the House committee and the House committee invited some of the members of the Senate committee to go to Washington and they did. I remember that

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Senator Word did go, but I—I don't remember—I can

find out—

Q Senator Mauzy, too, I believe?

A Senator—Senator Mauzy was not a member of that committee, but if—if—he was a member of the big committee. He was not a member of the congress committee. Did—did he go on the plane? I didn't know. But—but several members of the Senate did go. I do remember Senator Word went.

Q And did anyone have occasion to discuss with you what transpired at that meeting in Washington?

A Oh, not to my memory, other than—than talking to Senator Word that they went and—and he said they had a good visit with the congressional delegation. We didn't talk any specifics about—about the trip as far as what any individual congressman may or may not have said. As presiding officer of the Senate, I try to stay uninvolved in—in—in the particulars with—well, first of all, time prevented me from doing it even if I had wanted to, but I—I try to stay as uninvolved as best as I could in what—in what the committee was doing.

(P. 15)

Q May I take it, then, by your answer, Governor, that neither you nor your staff made any specific suggestions to the committee?

A Well, I made some suggestions, in that when we got into the special session and they hadn't gotten a bill, on one or two occasions, I remember one time late at night, perhaps with a little too much emotion, I—because I was—I was a little angry at that time, because the committee—I've forgotten now. We had been in session three or four days and they had been meeting and—and were at an impasse on—on getting a bill. And I remember one time, specifically, I went to the committee and suggested that they get a bill—they—that the Senate and the House to get back to

me, as president of the Senate, a bill as quick as they possibly could. I even think I went probably as far as to say I might even discharge some of the members of the conference committee and appoint a new one if they didn't—

Q But you made no specific—

A I—I didn't—

Q —recommendation as to the substance?

A No, I didn't, no. No, I didn't—

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I—I wasn't talking about substance.

Q Did you make any such recommendations at the regular session of the Legislature?

A Not to my knowledge, as—as far as the committee. I'm sure that I—that I inquired several times of Senator Word to get a—to—to be working on a bill. They were working on a senatorial bill, also, and I was trying to get a senatorial redistricting bill out. And I'm sure—I may have in a speech to the Senate urged them to work on—to work on—on congressional and senatorial redistricting. I might—I might have said this in the press several times, urging them to get a bill, but as far as specific recommendations, I never made any.

Q Well, Governor, I have reference to an article in the *San Antonio Express* on May 29th, 1971, the pertinent part, which I'll read to you and ask you if that's accurate. According to the article, it says that, "The Senators took only twenty minutes to pass the bill," referring to the congressional redistricting bill, "once they received the revised committee version in printed form. Lieutenant Governor Ben Barnes disapproved the original committee-approved draft

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and ordered it redrawn before permitting it to be brought to the floor about 9:50 P.M. The portion of

the committee bill disapproved by Barnes was the Dallas-Fort Worth area"; do you have any recollection of that, Governor?

A This was during the special—this was during the regular session?

Q May 29th.

A Yeah, I guess—I guess it was the last day of the—

Q Of the regular session?

A No, I don't have any recollection, but I can—I may can talk to Senator Word or we can—or the committee staff and come back—can find out exactly what—what the problem was. But if they only withdrew—they only redrew the Dallas-Fort Worth lines, is that—is that what it says?

Q Well, let me show you what I'm talking about, Governor. That might help you. This paragraph right here (indicating).

A No, I don't remember that. I really don't know. But I would—I would think that—that probably in—in looking at the map, I—I—I could say if I objected to it. I'm—

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I'm not a student of redistricting as far as what that first bill did to Dallas-Fort Worth. I'm sure that the—that the lines may have looked gerrymander to me and I—and I may have raised that question. And I use gerrymander very loosely from the standpoint of how it looked. I—I shouldn't get this into the deposition. When I think of gerrymander, I think of Senator McKool's district that he—that he presented to the Senate for the—for the Senate redistricting bill where—where there was an umbrella shape that went up and got his house in Dallas County and then came down one precinct long down and then—and got the bulk of his district. I'm sure that there was something peculiar

about it that I would raise objections to it along those lines, but I—I—I really don't remember specifically. And I'm sometimes given credit for in newspapers what I do not do, but—but if that's—I'm—I'm not arguing with the press there.

Q I understand that, Governor. I just suggested it to you in hopes that you might have some recollection of what this referred to.

(P. 19)

A No, I—I really—I really don't have any recollection.

Q Do you have any recollection of expressing your thoughts on the shape or existence of the new Twenty-fourth District, that is what we refer to, Mid-Cities District?

A No, I really don't. As a matter of fact, it's only until recently that I have been able to even determine exactly where those lines were myself—and who's in which district in the Dallas-Fort Worth area.

Q You didn't particularly take note of its shape and feel that it was—

A Well, I—I didn't—I'm sure that if I had thought that it had not met what—what I considered to—to be a reasonable district that—that I would have raised some objections at that time when the committee went over it with me and when I saw the final printed version, but I don't—I don't remember raising any objections at that time.

Q To direct your attention, Governor, to the Harris County Gulf Coast area, are you roughly aware of the districts as they stand now? I don't mean do you know precisely where—

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A I don't know precisely. Yes, I'm—I'm aware of basically—

Q I understand that the Eighteenth District that

was created under SB 1 is in the central core of the city of Houston; is that your recollection of it?

A Yes, it is. I don't—I'm not familiar if that is the number, but there is a district that is—

Q And I believe that's the one that Senator Jordan has announced as a candidate in the Democratic primary for; do you have any knowledge of that?

A Well, I—I know that she's going to be a candidate. Has she announced yet? She may have already announced, but I don't think she has formally announced.

Q But you read the papers and you know that that's supposed to be Barbara Jordan's district, is that correct?

A No, I don't—I don't know that it's supposed to be Barbara Jordan's district. I—I do know that she's made her intentions known to run for Congress.

Q And were you aware, Governor, of the

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effect of the creation of that district on the other districts lying wholly or partially in Harris County?

A I'm not too sure I understand what you mean.

Q Well, what I'm getting at, Governor, is this: that Eighteenth District is plopped down more or less right in the middle of Houston. It's a little bit to the north side, northeast side, but basically, it's right in the middle of Houston. And then the other districts seem to be peripherating around it; do you have any knowledge of why that particular group of contiguous districts was drawn in that manner?

A Well, I would say that—that those districts, as do the senatorial districts in Harris County, try to—try to recognize community of interests. You—you can go several different ways about dividing an urban county. I—I—I remember the court has—has criticized some pie-shaped districts coming in and—and

everyone represents a little bit of the center and coming out. It—it's very hard for people living in those urban counties to distinguish the district lines. I guess there are twenty to thirty

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different thoughts on how to divide—divide urban districts, but—but I think that the Senate Bill 1 version is—is a fair and equitable way to divide Harris County.

Q You were aware, were you not, that this central core district of Harris County has extremely heavy ethnic minority population, that would be black and brown population, are you not?

A I'm aware now that—that—of the percentages. I was not aware of the percentages of black-brown versus white at the time the bill was passed. Obviously, I knew a lot of people, a—a lot of the—of black Texans lived in that district.

Q And you would agree, would you not, that the effect of creating that district would have been to remove a number of predominantly black and brown census tracts from the other congressional districts peripherating around that Eighteenth District, will you not?

A Well, I'm not sure that I was aware at the time of the bill. As a matter of fact, I'm not aware now of —of what percentage black are in the other congressional districts. I know that there—there are some—there are some—

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there are black voters in—in some other of the congressional districts, but—but at the time the bill was passed, I—I wasn't aware of the percentages of whites versus black in that district or any other district. You're saying that—that if—if that district had a high percentage of black, then there wasn't—the other

districts had to lose some of their black population?

Q Governor, I'm not supposed to testify, but I think you have gotten the inference of my question quite well. Let me move on, then, and ask you this: were you aware, Governor, of a shift of several predominately black census tracts in Dallas County from the district of which Congressman Cabell is the incumbent into this new Twenty-fourth District?

A No, I was not aware of that. I was not at all.

Q Governor, to your knowledge based on your legislative experience, and the fact that you are trained in the law, what criteria may be considered in drafting a congressional redistricting bill?

MR. McDANIEL: I think that calls for an opinion, which he

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can express if he wants to, but it's certainly not factual testimony.

MR. FISCHMAN: I understand that, Counsel. And I would appreciate the Governor's thoughts on it.

A Well, Larry, I really—I mean, I can—I can quote back to you all—all the terminology that everyone that talks about redistricting speaks of, but I don't have any new criteria. We can talk about community of interests and, certainly, we can talk about areas contiguous to one another. And I—I—I can go on and do this, but I—I don't know that I can add anything new to—to a definition of—of what the ingredients are for—for a constitutional redistricting bill.

Q All right. Governor, it's, as Counsel has pointed out, it would just call for an opinion and probably wouldn't carry much strength as admissible evidence in a legal proceeding. Let me ask you this: I get the impression from your testimony here this morning that certainly the committee chaired by Senator Word

considered

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population as a factor in drawing the congressional districts?

A Yes.

Q And I think it's fair to say, Governor, that the committee also considered preserving as far as possible the integrity of existing districts so as to preclude as much as possible one congressman having to run against another one?

A Well, I would think that that was part of the criteria, but, of course, when you're—when you're moving districts to urban areas, that's—that's impossible, as—as it was in this last congressional redistricting bill.

* * *

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Q Governor, were you aware of the numbers in the, that is, the mathematical population of each district under the three bills that were eventually passed, that is, the House bill that was sent over and then the Senate bill,

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which was a substitute, and then finally the bill that was passed in the special session, were you aware of the numbers involved in each district?

A Are you talking about the percentage of deviation?

Q Well, not necessarily expressed in percentages. But were you aware that some districts were under and some districts were over?

A Oh, yes. I'm—I'm sure at the time that—that I was much more aware than I am now. I can't tell you now which districts were under and which districts were over, but I'm sure at the time that—that I—well, I had in front of me the population of each district. It

was printed on the—it was printed on the—on the map that was passed.

Q Was a map actually enacted as part of the bill?

A Well, it wasn't enacted as part of the bill, but Senator Word had a map with the congressional lines drawn on it, I think, at his desk at the time that the—at the time the bill was being passed. But that doesn't help any in the urban areas, because the map's about —was—the maps were about the size of your—

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Q Right.

A —newspaper maps, so it doesn't show the—the division of districts in urban areas. It just shows Dallas and Harris County and Tarrant and Bexar divided into—into districts.

Q Then were you aware, Governor, that the bill enacted by the House deviated less on the averages than the bill that was enacted by the Senate or the bill that finally passed as SB 1 in the special session?

A No, I—I—I cannot say that I was aware at that time.

Q Can you tell us what was wrong, to use a word loosely, with the House bill that was sent over and was rejected by the Senate?

A No, I really can't tell you what was wrong with it, because I—I really don't remember exactly how the House bill differed from the Senate. I think from a—I—I think from a practical standpoint that—that there were not—that there were not sixteen votes in the Senate for it. I think that was the first thing that was wrong for it. The Senate wanted to—to write their own bill and I think there's a great deal of, perhaps, of pride of authorship, so to speak. I have

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been a long proponent of—of—of changing our conference committee system in Texas. But as you know,

most important legislation under—under Texas legislative rules is written in conference committees. I would like to change this. And I'm editorializing your deposition. I apologize.

Q Go right ahead, Governor. Governor, you're quoted in the *Corpus Christi Caller* on February 28th, 1971, as being in agreement with Representative Delwin Jones of Lubbock, who was the chairman of the House redistricting committee, that the Texas senior congressmen should be preserved; do you recall ever making such a statement?

A I have said—I have said in several speeches that—that our congressional seniority is a—is a good asset or a great asset for Texas in Washington and that I hope that—this was back during the time of the session—that I hope that our seniority could be preserved to the best of the Legislature's ability.

Q And that they should consider this as a factor, Governor?

A Well, certainly, it—it was—it was on my mind as a factor and I'm sure it was, to

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some extent, it was on their mind.

* * *

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Q I'm not sure, Governor, that it's clear to me why the House bill didn't get through the Senate. Could you try and run that by again?

A Well, not having the two bills here in front of me, I cannot discuss the particulars. But I think on congressional redistricting and like all other matters, that there's a great deal of Senate and House pride. Very few bills of real importance pass both the House and the Senate. The Senate passes a version and the House passes a version and the differences are arbitrated in the

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conference committee.

Q And you don't recall without having the bills in front of you what the substantial differences were?

A No, I—I really don't.

Q And you don't recall being aware of the fact that the average deviation in the House bill was much less than either the Senate substitute bill or—

A Or the conference committee report? No, I really don't know.

Q Is it your considered judgment as presiding officer of the Senate that this was the best bill that they could have passed?

A Yes. I—I'm—I have got enough faith in the people that I appointed to the committee that they came up with the best possible plan that could pass. I read stories about—about junior high students sitting down and drawing redistricting maps in an hour's time and their being better than the bills the Legislature passed, but I think when you realize how thedemocratic process works, it's—it's slightly more different —difficult than it would assume to a layman.

Q I take it that's because that the

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Legislature, as the elected representative of the people, has to consider factors other than just pure mathematical drawing of lines?

A A man has to to the best of his conscience represent the constituents that elected him.

Q And they have to consider other factors in drawing these bills other than just population equality?

A Well, I think it would be less than candid on my part if I said that the—that the population was the only factor, but I—I think that they did to the best of their ability draw a constitutional congressional redistricting bill.

Oral Deposition of

Gregory Drew Hooser

* * *

(P. 6)

Q She's concentrating on her pad. Were you employed, Mr. Hooser, by any agency or department of the state of Texas or the Legislature during this last session of the Legislature?

A Yes, I was.

Q What agency was it?

A By the Senate of Texas.

Q Is Austin your home town, incidentally?

A For the last thirteen years.

Q How do those, I remember from my own

(P. 7)

law student days, those positions are, shall we say, coveted, how did you happen to come by yours?

A That's a difficult question to answer. I initially began working for the secretary of the Senate as a Xerox machine operator my sophomore year in college.

Q And you have just kind of—

A I suppose.

Q —stuck with it ever since?

A I worked my way all the way through school.

Q What were your duties as an employee of the Senate during this last session of the Legislature?

A I was a clerk to the Senate committee, Senate redistricting committee. I think the official title is legislative judicial districts. I was employed as a clerk —clerk under the chairman of the committee, Senator J. P. Word.

Q What were your duties in that capacity, Mr. Hooser?

A I was generally directed to provide the commit-

tee with information, try to gather it, make it available to the Senate redistricting committee for the purpose of redistricting the

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legislative senatorial and congressional districts. Generally, I was an errand-boy when it really comes down to it.

Q Did you attend committee meetings?

A Yes, I did.

Q And did you do legal research?

A I suppose you would have to call it research, yes. I looked through a number of cases, tried to—mostly, my—my job was gathering material, like trying to get information regarding census data, trying to get maps prepared and make them available for the members of the Senate whenever they wanted to work on anything, answer calls, set up the committee meetings, general clerk work that was done in the Senate.

Q Did you also perform these same functions during the special session?

A Yes, I did.

Q Did you serve the members of the Senate and House conference committee on redistricting?

A Yes, I did, as a clerk to the Senate conferees.

* * *

(P. 11)

Q Well, what were you doing all these maps for?

A Well, we were trying to simply take a look, mainly, at our problem, at—at what would be—what were the possibilities, what were the requirements. First of all, when you draw a map, if you try to set down, and you end up with locating

(P. 12)

your problem areas.

Q What do you mean by "problem areas," Mr. Hooser?

A Well, when you draw a map you merely discover that in certain areas—

Q I wish, Mr. Hooser, that you would, insofar as you're able to recall, be specific about what areas you're talking about.

A Oh, that is going to be difficult.

Q Generalities, while they are helpful to me, won't be near as helpful as if you can recall the specific things that you're talking about.

A Well, you—you have to sit down and draw a map, for example, that specifies, that will give you an idea of how many districts you can draw in a—in a metropolitan county and what your surplus will be and what counties are contiguous thereto and that sort of problem.

Q Any other problem areas that you can recall?

A No.

* * *

(P. 13)

Q Did you ever have occasion to compare the census data to any proposed bill to determine

(P. 14)

whether the districts that were contained in the bill were either above or below the mathematical ideal, four hundred and sixty-six thousand five something?

A I'm sure I did, but I cannot recall. We—we always attempted to check percentage deviations, but I don't remember any specific.

Q I'm not asking if you can remember any specific figures. But what was your purpose in doing that?

A We wanted to know what our—what our population was and what our distribution was in a given district.

Q Were adjustments made—well, let me back up just a minute. You haven't told me how many bills were submitted; was there a number of bills or how

did it go about, from the original bill submitted by Senator Word, I want you to trace for me the steps, the process, of the bill that finally ended up as a substitute to the House bill?

A We simply took the base bill that Senator Word had introduced, then adopted a substitute that was worked out by the members of the redistricting committee.

Q How was it worked out is what I'm

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trying to get at?

A In consultation with each other, with members of the Senate.

Q Were you privy to these consultations to any extent?

A No, not to any extent, no.

Q I'm trying to get at what they actually did. How did they go about doing it; did they sit down with a map around a table or on the floor and draw lines or what did they do?

A Any particular message would be simply assumption since I was not privy to—to their considerations. It would be an assumption that they discussed how to tie up the program, how—I feel confident that the committee members drew their maps, that they compared maps with each other. And that's—that's all I can guess at.

* * *

(P. 17)

Q Now, I want to clear up in my mind. The map that you're referring to and any map that you prepared was prepared as a result of compiling data. In other words, you would sit down and say, "Well, the First District needs to have so many people in it and we can go at it by putting in these counties and these census tracts," and then you would, when you figured

out what went in there, then, you drew a line on the map, is that correct?

A That's—that's roughly correct, yes.

Q Well, how, you know, if your

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recollection of it differs, please tell me how it was different?

A I suppose that's a fairly good description of how it was done.

Q In other words, somebody would say, "Well, we ought to have such-and-such county in somebody's district," and then he would see what the population was and if it could be fitted in, then, he would draw the line so as to encompass that county in the district, is that right?

A Partly. Partly. The—the problem was attacked from every angle that it could be attacked from. Some districts, for example, there was no difficulty in El Paso County, because El Paso was—was quite near to the—I'm sorry. I'm—I'm jumping to—to another bill, jumping to another bill, to the Senate bill. There are some counties which—which—which were so close to ideal that there were no significant difficulties.

Q What about some of the urban areas such as Houston; how was that done?

A Approximately the same way, speaking in generalities. We just decided how many districts were—should be put into a—into a given county and the lines were drawn accordingly.

(P. 19)

Q Well, now, when you're dealing with an urban county like Harris County, for example, you would consider it by census tract, would you not?

A Yes. The bill reflects that census tracts were the basis for the inside metropolitan areas. That's the lowest available population figure we could get during

the session, because our figures, census figures that were available at that time were—went no further than census tracts in enumeration districts.

Q Where did you get your figures, incidentally?

A Directly from the Census Bureau.

* * *

(P. 20)

Q I take it the committee did meet formally from time to time, did it not?

A It did.

Q On how many occasions did it meet, to your knowledge?

A I do not recall the exact number.

Q The minutes would show that?

A Yes.

Q Were you present—you did indicate you were present at some of the, if not all, of these meetings?

A At the committee meetings, yes. I was present at most—most of them.

Q What, other than what's reflected by the minutes, what type of discussions were held?

A I can't recall. It's been too long.

* * *

(P. 22)

Q The population data that you used, that was just a raw body count; it was not refined further by anything such as voter registration or ethnic composition or anything like that?

A None of that information was available to us. The raw body count was the only thing that

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was available during the Sixty-second Legislature. In fact, we didn't have a raw body count until a good while after the session had convened, which I think was March was the first time we had anything we could work with at all.

Q Was any data made available to the committee on projected population trends at any time?

A The census information, itself, shows trends, or not trends, it shows the growth pattern between 1960 and 1970.

Q But you had no demographic projections?

A No, uh uh, none.

Q At any time during the session?

A No. The only—the only bases that could be made is the fact that the growth patterns which were reflected in the '60 to '70 growth could be projected into the 1980's. And this information was available to them, as I said, through the census population figures between 1960 and 1970. And the general—and the general trend of that information was that Texas was experiencing a continued concentration of growth in the—in the urban areas, particularly along two strings

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from—from Denton County to—through San Antonio and from Denton County through Fort Worth-Dallas to—to Houston. And most of the rest of the state as a rule is decreasing and will continue to do so.

Q That's, I take it, an expression of your opinion?

A Well, I—I would have to say that probably is strictly—strictly opinion, but it is opinion based upon the '60 to '70 data.

Q And that's all?

A No. It's based on—on other reports that we received, we had received, I was aware of through my study at the University.

Q That's what I'm trying to get at. What other reports did you receive?

A Oh, I had read a number of things from the Bureau of Business Research. I—basically, information in—in classwork I had done at the University while an undergraduate.

Q What, was this information also passed on by you to the committee?

A I mentioned it to the committee members, yes.

Q But you don't know whether it was

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considered?

A No, I don't.

Q And did you ever organize it into any kind of memorandum or other presentation?

A The—the—the information about the growth trends from 1960 to 1970 were made available to all members of the Senate through the census data that we made available to all members.

Q But this other demographic research that you did was not made available in any organized manner?

A Well, not that I can recall.

Q Were you aware, Mr. Hooser, that the Senate bill, that is, that was a substitute of the House bill deviated in almost every district from the mathematical ideal?

A I would assume that would be true.

Q Well, were you aware of it, Sir, at the time that the bill was being considered and at the time it was passed near the end of the session?

A To my knowledge, at least most of the districts did not equal the four sixty-six, I think, five three zero figure.

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Q And you were aware that some of them deviated by as much as two per cent or more?

A I don't recall the deviation.

Q What justification, if any, was discussed, either in the committee or otherwise, to your knowledge, to account for these deviations?

A I don't recall the justifications that were presented.

Q Were you aware at the end of the special session that the bill passed by the House at the end of the regular session deviated less on the average than the final bill that was enacted, that is, SB 1?

A I don't recall the deviations of either the House or the Senate bills, because simply too much time has passed since that time.

Q And you recall no specific discussions about this at the time? You're nodding?

A Oh, I'm sorry. No, I do not.

Q You were asked never to supply any data on voter registration during the course of the winding of these bills through the legislative process?

A I cannot recall any specific request for that information.

(P. 27)

Q Were you aware of any endeavor on the part of the Senate committee or the conference committee to minimize the possibility of any incumbent congressman having to run against another?

A I am unaware of what the considerations were by the members, whatever they agreed upon or disagreed upon.

Q And as far as you know, the only data on population shifts or projected population growth patterns or loss of population patterns was the comparative data of the 1960 to 1970 census?

A Well, we did make available figures. I don't recall how far back they went. Almost every member, I recall, had almanacs available. They were—which—complete—. I think, if I remember correctly, the Secretary of the Senate makes Texas almanacs available to all members and the almanacs do have, I think, population figures for, I think, back as long as the census has been taken in Texas, but I'm not sure. So they did have that information. Whether they used it

or not, I cannot say.

Q Did you make any data available generally on the ratio or ethnic composition of

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any census tracts or—

A We had no data of that sort.

Q In drawing these maps that you referred to, was it the idea to preserve the, for lack of a better term, rural districts and borrow from the more urban districts to fill these out to give them as nearly as possible the mathematical ideal number of residents?

A Again, that's a consideration of the members.

Q You have no knowledge of it?

A And I have no knowledge of what those considerations were.

Q Was an effort made, to your knowledge, to preserve county lines as much as possible?

A Again, that's a consideration.

* * *

Oral Deposition of
Carl Robin Teague

* * *

(P. 5)

CARL ROBIN TEAGUE, having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified on his oath as follows:

DIRECT EXAMINATION

BY MR. FISCHMAN:

Q Mr. Teague, state your full name, please, Sir?

A Carl Robin Teague.

Q And your address?

THE WITNESS: Do you need to spell that last last name?

THE REPORTER: T-E-A-G-U-E (spelling).

THE WITNESS: Right.

A 330 West Cheryl, C-H-E-R-Y-L (spelling), San Antonio, Bexar County.

Q You're a law student, Sir?

A Yes, sir.

Q Where, St. Mary's?

A St. Mary's.

Q How old a man are you?

A Twenty-five.

Q What year are you in?

A I'm in the first year.

(P. 6)

Q First year. Did you have occasion to be employed by any branch or agency of the State during the last session of the Legislature?

A Yes, I did.

Q What was that, Sir?

A I was a committee clerk.

Q For what committee?

A For the congressional legislative district com-

mittee.

Q Of the House?

A Of the House.

Q And that was Representative Delwin Jones of Lubbock's committee?

A Yes, it was.

Q And you served on that as what, now?

A As a committee clerk.

Q Committee clerk during the Sixty-second Legislature?

A Yes.

Q Did you also serve during the special session?

A No, I didn't.

Q Why was that?

A School started the first day of the special session. So I was actually in Austin the

(P. 7)

first day of the special session, but I had severed my relationship with them and had started at St. Mary's on, I believe it was, the first of June or something like that, second of June.

Q Tell me what the nature of your duties were in your job as a clerk for that committee?

A Well, strictly a, I guess you might say, kind of secretarial duties. I was to—when they brought—when they had some sort of a working plan and they would bring it to me and I would help with the adding machine and just—in other words, they would may—maybe want a couple of counties put together or something like that and I would put the counties together and add them up.

Q What do you mean "add them up"?

A In other words, add the populations up to see what your population figures were.

Q What figures did you use to do that?

A The census count—census figures, Census Bu-

reau figures, the latest figures we had. In other words, your county-wide figures.

Q Did you attend all the committee meetings, other than the ones around the state that

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were had by the various subcommittees?

A Yes, I attended all of them except for the ones in the special, now.

Q During the regular session?

A Right, all in the regular session.

Q I take it that a redistricting bill was introduced during the first sixty calendar days of the session, is that correct?

A Yes.

Q Who introduced that bill, do you know?

A Mr. Jones introduced the bill, I believe.

Q Do you know who prepared it?

A He did.

Q Did you work with him on it?

A No.

Q Did you ever see it?

A Well, now, the—bill that he introduced, of course, was a—I forgot what you call it—but it was just a bill to run with. Of course, we worked with Senate Bill 1—not—not Senate Bill 1—but we worked with a Senate bill in—in the regular session. In other words, the House passed a bill, the Senate passed a bill

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and it went to committee and we—the House was actually working with the Senate bill. So the House bill was never—was never worked with after it—after it passed the House.

Q Well, what I'm getting at is I want to get up to the point that that bill actually passed the House?

A Yes.

Q I understand that it was just something to work

with?

A Right.

Q I guess it was a general feeling that the bill would probably be written in conference committee?

A Right.

Q Had that feeling actually been expressed by Representative Jones and some of the other committee members?

A That—that it would—that the bill would be worked out in conference committee?

Q Yeah.

A Well, they made a serious effort to write a bill on the House side, but, of course, I guess people realized that there were going to be disagreements of opinion on what the final bill

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would come out. But we—I think that they had probably hoped that—that maybe the House bill would prevail.

Q Were you present at any committee meeting where Speaker Mutscher gave any kind of address to the committee?

A No, I don't believe he ever—not that I remember. Not in person, I'll say, not in person, that he has never in person to any—at any of the committee meetings.

Q Did he ever let the committee know any of his thoughts, to your knowledge, through anyone on his staff or through any other third person?

A Not to my knowledge.

Q How many formal meetings did the committee hold, if you know?

A I would say around three or four formal meetings. Now, that's not counting the ones that you're talking about, the state-wide meetings.

Q Right.

A I'm not real sure whether those were official meetings or not.

Q Well, there was no drafting or voting

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done at those—

A No.

Q —meetings around the state, to your knowledge?

A No.

Q What was done in these three or four committee meetings that you recall?

A Well, the first meeting was an organizational meeting. The second was—I believe they introduced a bill on the second meeting. And the third meeting—

Q Did the committee vote on that bill?

A No.

Q What was, you say, "introduced," what was done?

A It was—it was introduced—well, it was introduced, of course, on the House floor and then it was assigned to the committee. And then once it came to the committee, then it was assigned to a subcommittee. And then of course, the subcommittee works on—worked o nthe bill and then they reported it. I believe the third meeting was where the subcommittee reported the bill back out to the full House.

Q And these were just more or less

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pro forma type of things, weren't they, the real work was done on a more informal basis?

A There wasn't any—I don't guess there was any work done in—no, there wasn't any work done in the committee in the official committee meetings.

Q How long did these meetings usually last?

A Oh, I would say thirty minutes to an hour, I guess. Something like that.

Q No testimony was ever taken before the whole committee, was there?

A Yes, they had—they had some testimony, I believe, once they reported out the third—well, let's see. They had hearings on the—some of the bills, because there—there was more than one congressional bill. I believe there was two or three congressional bills. And then they had hearings on those bills, so there was testimony for those bills.

* * *

(P. 14)

Q Was there ever any discussion in any committee meeting as to what criteria were to be followed in drafting the bill?

A Yes. They just talked about the one man, one vote ruling and the equa—I guess they talked several times about the, you know, the equal protection, you know, how—how—well, you know, I guess mainly they were going on the one man, one vote. In other words, that—their criteria—well, they were going on more than that. They were going on the criteria of the one man, one vote and then there were also other considerations of

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community factors, you know, trying to get counties together that were—had community interests and things like that.

Q What else?

A That's about mainly it, was the community of interests.

Q Was there any discussion about protecting the seats of the incumbent congressmen—

A No.

Q —insofar as possible?

A No, not—not anything that I ever heard.

Q How about any discussion in any of the informal

working sessions?

A Well, I—I wasn't a party to any of the informal working sessions. In other words, I—I was never involved in any of the informal things.

* * *

(P. 16)

Q Well, how was that worked out, that's what I'm trying to get at, that committee amendment?

A I suppose it was worked out, you know, with—with the—with the subcommittee members. I believe Mr. Jones was the chairman of the subcommittee, either he or Mr. Clyde Haynes. There was a House subcommittee and a congressional

(P. 17)

subcommittee and I suppose that the subcommittee men worked that out.

Q But you didn't participate in any of these—

A No.

Q —working sessions?

A No.

Q Do you know anyone that did besides Representatives Jones and Haynes?

A I don't even remember the subcommittee people now, but I suppose all of them had—I—I suppose that they all deliberated over it.

* * *

Q And it's your testimony here today that to your knowledge the desirability of protecting the seats of the incumbent congressmen was never discussed?

A Not in—in the open—not in the

(P. 13)

public committee meetings that I remember.

Q Were you ever at any meeting or gathering where it was discussed?

A Well, not at any particular gathering or, you know, an ad hoc gathering or anything. I know—I'm

sure it was discussed that—every—every House member up there, I suppose, would like to, since every one of them had a constituent who happened to be a congressional member, they were all hoping that their—each—each individual congressman would be protected. So it wasn't any one particular person who was—

Q What leads you to make that statement, Mr. Teague; was it conversations that you heard or was it just your—

A No, it was just—well, it was general House conversation. In other words, you have—each—each individual House member has as his con—has as his constituent a congressman. And so every—all of your congressmen, I suppose, were communicating with some of their House people and your House people would like to give their idea—each individual idea and I suppose that they were talking—talking amongst themselves.

Q Well, this is just a supposition on

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your part?

A Right. Yes.

Q You have no knowledge of this?

A No knowledge of that, whatsoever.

Q You didn't get to go to Washington, I take it?

A No.

Q Any committee clerks get to go?

A No, I don't believe. Greg Hooser, I don't believe Greg Hooser went that I remember.

Q I forgot to ask him that this morning. Can you think of any other factors that were discussed in any of the committee meetings on what had to go into the, you know, what considerations should be taken into account in drafting the bill?

A Not besides population equality. It would—was

a—in the congressional bill, population equality really was the main thing. In other words, that was a mandate set down by the prior court cases that said it had to be as equal as—as possible, I believe it was.

Q Well, did you have occasion to examine the overall bill?

A Not the final bill.

Q I'm not talking about SB 1. I'm

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talking about the one that was passed by the House in its regular session.

A You mean the population figures on it?

Q Yes, sir.

A No, I don't remember the population figures on the bill. In other words, there was several bills. In other words, the House bill passed, the Senate bill, the one they passed, and then the conference bill that came out, of course, that never did pass, but I don't remember the population figures on it.

Q Well, I'm not asking you to recall any specific numbers.

(Whereupon a short interruption took place, after which the following proceedings were had.)

MR. FISCHMAN: Would you read the last question back?

THE REPORTER: Question: "Well, I'm not asking you to recall any specific numbers."

Q (continuing by Mr. Fischman) But were you aware of the average deviation from the mathematical norm of the bill that was passed by

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the House; do you recall any percentages or anything?

A Oh, they were shooting at four hundred and sixty-six thousand five hundred and thirty and I—there was so—so many different things. I—I don't

recall any probably over—much over two and a half per cent or something like that; plus or minus two and a half per cent, I believe was what they were originally shooting at and I don't—what they finally got, I don't know.

Q If I remember correctly, Representative Jones, the chairman of the committee, indicated that the way he understood it as much as ten per cent total variation would be acceptable; was that your—

A Now, what I remember was a total of five per cent. In other words, a—a maximum of five per cent. Now, there was a lot of confusion on that among several people, but some people—some people thought that it was plus or minus five and some thought it was plus or minus two and a half. My understanding is that it was plus or minus two and a half and what the—what the—

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Q The total between the largest and the smallest—

A Right.

Q —would be five?

A What the goal was, right.

Q So, in other words, it was understood, then, that if they came within two and a half either way that they were all right?

A That's what they hoped they—they hoped that that was all right.

Q But they figured it was good enough to go on and pass the bill—

A Right.

Q —in the House, anyway?

A Right.

Q Then there never was any effort to get it even closer than that, was there?

A Sure. There was—there was effort, I suppose, to get it as perfect as possible. I mean, that—in trying

to get the counties all—you had so many different counties taking your West Texas and your North and East Texas counties and everything where you weren't really—all you were just trying to do was just group your counties together and they were trying to get as close as

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they possibly could. But they figured that if, perchance, one district happened to be, you know, more than point zero zero per cent, then it would be okay. In other words, if something happened to be up to two and a half per cent, sometimes even maybe three per cent, they—they were shooting for a figure of plus or minus two and a half, but they hoped if something happened to happen where it would be a, say, three per cent deviation or something like that, maybe, it would be—it would be okay.

Q What justifications did they use to justify the deviations that came out in the final bill that was passed in the House?

A I don't know.

Q The figures that you worked with were just the raw census figures, is that correct? I may not be using the precise term, but it was just a body count?

A Right. In other words, on most of the counties, all they were using was just the total—total county figure. And of course, when you got down to Harris County, Bexar and your larger counties and they were going down all the way down into enumeration districts, once they got

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into it.

Q Okay. But there was no consideration of voter registration or ethnic distribution of the population within the counties or anything, was there?

A Not to my knowledge, because those figures

weren't available to us at that time.

Q Did anyone ever express any consternation over the fact that they weren't available?

A No, because we—really, we had enough to work with with the—with your county-wide figures, we had enough to work with. And we had all the way down—our smallest figure, I believe, was in a—I mean, a enumeration district. And of course, we did not have the block figures. So that was the smallest thing. But we had enough—they had—

Q Well, now, if I understand you correctly, an enumeration district is not really that small a thing geographically. These are the breakdowns of the more —of the less populous rural counties, is that correct?

A Right. Your—your—your—your enumeration district roughly equates with a block

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group. And your block groups are found mostly in your urban counties and your enumeration districts in your county—in your rural counties.

Q When you say "block groups," do you mean census tracts?

A No. No, your block—you have—your smallest figure is a block. Your next to the largest figure is a block group and your block groups make up your census tracts and your census tracts make up the county as a whole.

Q That's in urban counties?

A Right.

Q And in the rural ones, they don't break it down any further than the enumeration district?

A Mostly just—mostly just enumeration districts.

Q Or at least at the time that you needed the figures—

A Right.

Q —they hadn't broken it down any further than

that?

A Right.

Q Was there any discussion or input on population changes, that is, growth or loss other

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than the known factor of the tendency of going from rural to urban?

A Other than that?

Q Yes.

A No.

Q And the only input you had on that was the comparison of the 1970 to the 1960 census?

A Right.

Q Is that right?

A Right.

Q Nobody did any really serious demographic study?

A Not to my knowledge.

Q Was there ever any consideration of matters such as, oh, Bexar County, for example, has a rather heavy transient population of military, was this ever discussed or taken into account?

A No. Your military—your military bases here—in fact, we did not have a breakdown on those so they had to be taken as a whole. Each—each base had to taken as a whole and we were given the figures on each base by the Census Bureau and that's all we had to work with on that. And as far as I know, I—I have never—I have never heard of any average dev—I mean, average figures

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on—on your transients, whether or not they raise in level or decrease during the year or not. I don't know. I think here in Bexar County they are fairly steady, I would—I would guess, because your—

Q And nobody took time to find out how many of

the military population registered to vote and things of that sort?

A Not that I know of.

Q All right. And would the same thing be true of areas like Travis County with a very heavy population nine months out of the year of the University students?

A Now, you—you're speaking of voter registration?

Q Well, I'm talking about was this factor taken into consideration in any way in drawing the districts that are wholly or partially in Bexar County or wholly or partially in Travis County?

A Not that I know of.

Q All right. And is it your testimony here today that there were, to your knowledge, no consideration of racial or ethnic composition of any congressional district?

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A No, not that I know of. Of course, as I said before, the—your Census Bureau had not had any breakdown on that. And even if—even if they had, I don't know if they would have had enough time to really take a good look at it or anything.

Q Well, irrespective of whether the information came from the Census Bureau, did you get any input from anywhere else?

A No.

Q Okay. I'm not sure I'm clear about one thing, Mr. Teague. Are you telling me that you were not privy to any committee discussions other than the formal committee meetings?

A Right.

Q And it's your testimony that there was no discussion in those formal committee meetings as to whether—or as to preservation of incumbent congress-

men?

A Not that I ever heard.

Q Were you aware of the trip that was taken to Washington by Representative Jones and several other committee members?

A Yes, I'm aware of it.

Q Were you aware of the purpose?

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A No. I suppose the purpose was to go to talk to them, to your congressmen. I mean, it wasn't—it was not a tourist trip or anything like that.

Q You were served with a subpoena and are testifying here today under that subpoena, are you not, Mr. Teague?

A Yes.

Q And you recall it was a subpoena duces tecum asking you to produce certain documents, records, papers, correspondence and so on?

A Yes.

Q Do you have anything with you?

A No, I don't.

Q Do you have any of those documents that were called for in the subpoena in your possession?

A No, I don't.

Q Have you ever?

A No, I never have. Of course, I might say that your committee minutes are official records, public records, so—

Q I understand that. And did you tell me that you were not privy to any discussions of the results of this trip to Washington?

(P. 30)

A No.

Q And it is your testimony that it was generally understood that two and a half per cent leeway either way would have been acceptable?

A I believe so.

Q Are you sure, now, Mr. Teague, that you don't have that confused with the House, the Texas Legislature, the deviation? Think very carefully and I want to pull out something here, if I can find it, and try to refresh your memory. Incidentally, you didn't prepare any press releases that were issued during this?

A No.

Q Here it is. Mr. Teague, I'm going to read a paragraph to you from the *Corpus Christi Caller*, I assume a Corpus Christi newspaper of general circulation, dated February 28th, 1971, quoting Delwin Jones, the chairman of the committee, it says that, "Jones thinks the court would tolerate a population spread of five per cent between the biggest and smallest House district and ten per cent on congressional districts"; do you recall those figures or has the newspaper stated it incorrectly?

A In saying ten per cent, you mean ten

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per cent—ten per cent plus or minus or—

Q No, ten per cent from the variation between the smallest and largest, or five per cent each way?

A In other words, you're talking about plus or minus five?

Q Yeah.

A I know at—I know at first there was some, as I said, there was some confusion as to whether it was plus or minus five or plus or minus two and a half. Now, it's my understanding that it was two—plus or minus two and a half. I know that some people that —in other words, when you—when you start talking about a ten per cent spread or a five per cent spread, some people don't know whether you're talking about a plus or minus two and a half or a plus or minus five. And it's my understanding that it was a plus or minus

two and a half, rather than a plus or minus five, when you're talking about a five per cent deviation.

Q Did you ever hear—

A I may be mistaken.

Q Did you ever hear Chairman Jones express what his understanding of it was?

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A At first, I believe, he—he understood it to be plus or minus five, I believe. Of course, he would have to speak for himself, but I believe that he thought it was a plus or minus two and a half. Some of the figures—some of the figures on the congressional—on the final thing were—were—I don't think they varied any more than plus or minus three, as far as I can remember.

Q Well, we can determine that by looking at the bill.

A Right.

Q Would you tell me when and where it was that you gained the impression that Chairman Jones had revised his thinking about the spread on congressional districts?

A Well, he had talked with the legislative council and I believe he had also talked with the Attorney General's office, if I'm not mistaken. In other words, at—at first, it was the general understanding that it was a plus or minus five or a general misunderstanding. And then after talking with several people, it turned out to be a plus or minus two and a half.

Q Tell me what the misunderstanding was

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with respect to this variation; did that mean that they could juggle the districts around within those perimeters and still felt like it would stand up in a federal court challenge?

A I'm not sure what you mean.

Q Well, in other words, was it the consensus of the committee, as far as you're aware of it, that if they got it down to within two and a half per cent either way that they were all right and within that two and a half per cent, they could make adjustments for these other factors such as protecting incumbents and compactness and contiguousness and community of interests and so on?

A Now, what—what was your question?

Q Well, I'm—

A Are you asking whether or not they considered those other factors?

Q No, I'm asking you whether it was their understanding that they could take those into consideration so long as they stayed within the two and a half per cent each way?

A Well, I'm not sure exactly what their understanding was, but that would be my understanding, that as long as your—that since it's strictly a—a test of population equality, that—that

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once they got in—within this population equality figure or the deviation figure, then, you could work with the other factors to justify it.

Q In other words, that two and a half per cent would be, you're familiar with the Latin expression, de minimis?

A Right.

Q And then they would, it was their view that it would be a de minimis type of thing that the court would say would be all right?

A Right.

Q And you gained that understanding, I guess, from discussions with the committeemen and working on the bill in your capacity as clerk?

A Well, in other words, when they would bring

counties, when they would bring a—something that they would like to work with and want me to add it up, then, I would add it up and if they said, you know, they would say, "Well, of course, we're shooting for four hundred and sixty-six thousand and if it goes above, say, four hundred and seventy thousand, something like that, then it's no good." In other words, they gave—they—when we were working with specific counties, they would give me—I knew that the figure was

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four hundred and sixty-six thousand and if it did not meet within two and a half, plus or minus two and a half per cent of that four hundred and sixty-six thousand, then those counties could not work together or that geographical area could not work together.

Q And if it did, then you would pass it along and say, "Yeah, this comes within the two and a half per cent"?

A Yeah.

Q And then to go back to my question again just a minute, it was their understanding the two and a half per cent would be such a small deviation that it wouldn't be of concern to the courts?

A That's my understanding.

* * *

Oral Deposition of

Zan Wesley Holmes

(P. 2)

ANSWERS AND DEPOSITION of ZAN WESLEY HOLMES, a witness produced on behalf of the Plaintiffs, taken in the above styled and numbered cause on the 21st day of December, A.D., 1971, before JAN STROUD, a Notary Public and Certified Shorthand Reporter in and for Dallas County, Texas, in the offices of FISCHMAN, ROSENBERG, KASMIR & PRESTON located at 601 Kirby Building, in the City of Dallas, County of Dallas and State of Texas, in accordance with the agreement hereinafter set forth.

* * *

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DIRECT EXAMINATION

BY MR. FISCHMAN:

Q You are Reverend Zan Wesley Holmes?

A Right.

* * *

(P. 6)

Q Reverend, among other committees that you served on during this last session of the Legislature, did you also serve on one that was concerned with congressional redistricting?

A Right.

Q I take it, then, that you were on the over-all House redistricting committee that was appointed by Speaker Mutscher and chaired by Representative Delwin Jones?

A Right.

Q Were you on any subcommittees, Reverend?

A No. No, I was not.

Q You weren't on any of these committees that

went around to various—

A Oh, I'm sorry. Yes, I was. I was on the subcommittee that—on legislative redistricting, yeah, that had to do with the redistricting in Harris County and Travis County and there were some other counties included there. I don't recall all of them. But this was the

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committee that traveled around the state to conduct hearings, the subcommittee, to conduct hearings. So I—I did serve as a member of that subcommittee.

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* * *

Q Oh, excuse me, Reverend. I didn't mean to—

A No, that's all right.

Q —cut off your answer. Did you have occasion to attend a meeting of the committee which was addressed by the Speaker?

A Yes. That was the original, the first meeting of the committee and I believe that I was present at that committee meeting. I believe I was. He addressed, I think, one or two committee—three committees that I was on. I believe this was one of them.

Q Can you recall, in substance, his remarks on that occasion, Reverend?

A No. I—I recall him—I recall some general remarks about the—the work of the committee, the importance of the committee's work

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and sort of outlining the—the areas of responsibility that we would have, this committee. But I can't recall any of the finer details.

Q You recall nothing said by the Speaker with reference to the factors to be considered by the committee in drafting a congressional redistricting bill?

A There were some factors stated, but I don't

recall the factors stated by the Speaker, as such. I recall some, let's see, that were stated by the chairman. I think I do.

Q Well, then let me ask you what those were, to your recollection, Sir?

A That—one was that consideration would be given to incumbent members, that is, to try as best as possible to—to—now, we're talking about congressional redistricting?

Q Yes, sir.

A No, I don't. No. No, I don't. I'm thinking about legislative.

Q You recall nothing, Reverend, being said about endeavoring to preserve the—

A Except—let me say this—except, generally, I—I—I recollect on—on—on congressional redistricting the—the—the—

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the point being made that we had an effective House delegation in—in Washington that had power and that was influential and that it was in the best interests of—of Dallas, I mean, of the state to maintain that influence and take that into consideration in—in the—in redistricting.

* * *

(P. 12)

A Yeah. Yeah, very, very, very important. Really, my preparation was simply that of—of trying to understand at that time the—of course, and keep in mind, we had House redistricting, Senate redistricting. And in all fairness, most of my attention was directed to the House redistricting and—and—and redistricting of the Senate. And as far as preparation for the congressional redistricting, it was just simply that of trying to inform myself of the present lines and how they would affect, as particularly, Dallas County and

—but beyond that, and I had a staff person that I assigned to that task of putting together this information, but apart from that, no other preparation that I can think about, specific preparation.

Q Had you had anyone to familiarize you with the criteria established by the several federal court cases that have spoken on the topic of congressional redistricting; in other words, had you studied the law at all?

A No.

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Q Or had someone study it?

A No.

Q And brief you on it?

A No. No.

Q Was any such information made available to the committee, generally, and you just didn't have time to avail yourself of it?

A I don't recall of such information being made available to the committee. Probably it was there for those who—who wanted to get it.

Q You were mindful, I take it, Reverend, of the, what has been referred to, as the one man, one vote concept?

A Yes.

Q What was your understanding of that, Reverend?

A My understanding of that was that the—the redistricting would be done in a manner that—that the—well, as far as the—here again, I keep coming back to the House—that we would have the—the single member concept, that is, where votes of individuals would be just as important, of one individual, be just as important as the vote of another individual in determining his representation.

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Q In other words, if I can maybe paraphrase and refresh your recollection a little bit, the idea of one man, one vote was to get the districts as nearly equal as possible mathematically, is that correct?

A Right, which would, in effect, have the effect of making one man's, one individual's vote equal in power, in my opinion, to—to another's.

Q Was any discussion had of what would be an acceptable deviation from the mathematically ideal district?

A Yeah. I think four, four point, four, yeah, four point deviation, four per cent deviation was what we were generally talking about at the time.

Q Was this a target that the committee—

A Yeah.

Q —was shooting at?

A Yeah.

Q And you figured if you would get within that that the bill would stand, pass muster in federal court?

A Yeah. Yeah, as best as I can recollect on—on that.

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Q Was it the consensus of the committee, Reverend, that within four per cent was good enough, that you didn't have to get them exactly equal?

A As best as I can recollect. Although from what I can recall, there was really not too much discussion of this. We—we did understand that it would be difficult to get all of the districts exactly to have the same number—number population, that there would be some, some deviation. I believe the four per cent deviation was what was stated by the chairman as being something sort of a guide to look at. I don't recall of any agreement as to—by the committee as a whole as to what—what—what would be the—what would be the ideal or what would be—

Q I take it when you refer to the chairman, you're referring to Representative—

A Delwin—

Q —Delwin Jones?

A Right. That's right.

Q Well, Reverend, I take it, that being a member of the committee, you did have a hand in drafting the congressional redistricting bill?

A I was a member of the committee. I don't feel that I had a real hand in drafting the

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bill.

Q Tell me why not, Reverend?

A Well, first of all, I don't feel that I was given the opportunity to actually participate in the detail, in a lot of the detail work which went into the drafting of the bill. I did not have the opportunity, nor was I invited to make some of the visits that I understand were made by members of the committee to consult with incumbents in Washington and in other places to discuss the redistricting, how the lines would be drawn. I did receive some correspondence from—from some of the congressmen and—but in terms of actually sitting down and getting involved and the detail decision-making, which went into the drafting of that bill, I was not a participant, nor was I offered the opportunity to participate, except that I was, it was made clear, I believe, that members of the committee could submit plans that they felt would be—would be good plans.

* * *

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A I don't know exactly why I was not invited to—to participate in—in some of the detail work that went into the drawing up of the plans, except that possibly some of my viewpoints concerning redistricting might

not have been in—in keeping with some of the other members of the committee. For example, it was known that regarding redistricting of the House that I was in favor of single member districts. I had made it known that especially in congressional districts that I favored the viewpoint of having the districts originate in the cities and then move out into the rural areas. I favored the viewpoint that I felt Dallas was entitled to approximately three, total, complete districts, and that the lines should so be drawn, that Dallas should not be chopped up, because I felt that would gerrymander, have effect of discriminating against the city and then discriminating against particular groups within

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the city.

So my—my viewpoints, I'm saying, on redistricting were known from those particular viewpoints and I don't—from—as I can recall the viewpoints of others on the committee, they were not—these were not similar. So I can only say that, perhaps, that—that had something to do with it.

Your second question was you asked me why was I not invited to participate—

Q Well, no, I think that was my first question.

A You must have—

Q My second question was: if it was not the committee as a whole that actually made, that actually did the decision-making beyond the pro forma voting of yea or nay, who actually did it?

A Well, I—from—from what I can recall, the chairman, Chairman Jones, had a major part in the drafting of the bill along with Representative Clyde Haynes, who, I believe, I don't know if he was vice-chairman or not, but it's my understanding that he—he had a large part of—of actually in a lot of the detail

work in—in—

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in the drafting of the bill. Beyond that, I don't—I don't personally know of any members of the committee who actually had a lot—lot to do about the drafting of the bill.

* * *

(P. 21)

Q What circumstantial evidence, what circumstances lead you to conclude, as you have just concluded, that it does distinctly bear the imprint of the Speaker of the House?

A Well, I guess I ought to ask you your interpretation of circumstantial evidence. About all I can say is that it's a known fact, in my opinion, that—by all the members who served in the last session of the Legislation—Legislature that committee chairmen are appointed by the Speaker of the House, all of them, and that very seldom does legislation come out of those committees unless they have the endorsement of the Speaker of the House. This is just my experience and as a—as a Legislator in the Texas House of Representatives. That given the fact that these were major pieces of legislation, some of the most major pieces of legislation that we faced, and given the fact, you know, the Speaker, himself, was—formerly served as chairman of the—was chairman of the last redistricting bill, sponsor of it, chairman of the committee prior to this one, given the fact—given the importance of this particular legislation, no important, no legislation that

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important emerged from any committee or got a chance, you know, for a run on the floor of the House unless it had the endorsement and backing of the Speaker.

Q This was just—

A That's just—
Q —standard operating procedure—
A —standard operating procedure.
And given the rules—
Q —under the rules—
A —and the methods.
Q —of the Sixty-second Legislature?
A Right. Right.

* * *

(P. 24)

Q Well, then may I understand this, Reverend: Speaker Mutscher has indicated in his testimony in this case that he appointed, I believe, twenty-one people to the committee, twenty-one members of the House, to the redistricting committee and he further indicated that he attempted to give a mix between urban and rural and tried to represent the many varied interests of the population of the state. And while he may have appointed these people, as he has indicated, that doesn't necessarily mean that they had any meaningful input into the final bill; is that in substance your testimony?

A Yes, that would be my—that would be my testimony. I would also question whether the—the—the committee, the make-up of the committee, actually was a true reflection of the over-all make-up of the House in terms of philosophy, as well as—

* * *

(P. 25)

Q As far as you know, the only people that really did anything meaningful were Chairman Jones and Representative Haynes?

A As far as I know.

Q Now, Reverend, in terms of just mechanical steps, I have gleaned from the previous testimony given in this case that the House didn't really expect

that a congressional redistricting bill was going to be written anywhere but in the conference committee; was that your understanding?

A Yes, that's my understanding, that generally—it's a general understanding that that's the way it would be done.

Q From the very outset?

A Oh, yes, from the very beginning. This was, practically on all major pieces of legislation, this was our understanding, that the conference committees would write—write this legislation.

Q Now, I understand further from the previous testimony that a working bill or something that the committee could pick up and run with was introduced by Representative Jones within the first sixty days of the session and then referred to the

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committee; is that correct?

A That's—that's correct.

Q And technically speaking, the committee functioned in holding hearings and deliberating that bill; is that correct?

A Right, technically, yeah.

Q Were any other bills introduced and referred to the committee during the regular session?

A I don't recall one on congressional redistricting, as far as I can recollect. There were attempts to amend the bill that was brought out on the floor, but—

Q These were floor amendments?

A Floor amendments. But I don't recall of any—any new—any bill, new bill, except, that was introduced to the committee.

Q What about committee amendments?

A At this time I—I cannot recall any committee amendments.

Q Well, perhaps I can refresh your memory. As I

understand it or, perhaps, I'm wrong about it, the bill that was reported out by the committee was the original bill that was introduced by Representative Jones, but it had been

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amended by striking out everything below "Be it enacted," and then the final version that the committee came up with.

A The substitute.

Q The substitute bill—

A Yes.

Q —was reported out?

A Yes, this is true. Right.

Q So this one amendment, then, encompassed all twenty-four congressional districts?

A That's true. That's true.

Q And whose brainchild was this, now?

A As far as I know, it was the brainchild of the chairman and Representative Clyde Haynes, to a lesser extent.

Q I understand one of the members of the committee was Representative Shannon from Fort Worth?

A Yes, that's true.

Q Did he have any hand in it as far as you know, Reverend?

A No, as far as I know. I would have no way of saying he had a—I would suppose that he—he—he would have a hand in it. But as far as actually seeing him at work, I wouldn't know.

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The reason why I would—I include Representative Clyde Haynes is because I happen to know that he did a lot of the detail work in figuring the sizes of the various—the population figures and so forth and so on. As a matter of fact, I recall that he had acquired a special hand calculator, you know, that he informed

me that he—he used for the purpose of working on the —on the bill. As a matter of fact, I was admiring it one day on his desk and he was telling me about it and also telling me about the long hours that he had spent in working on the redistricting bill. So I—I happened to know that he—he did a lot of the detail work on the basis of that. He was somewhat of—I don't know if he was vice-chairman of the committee, but he—he appeared to have had some major responsibility in some of the—just the detail work.

Q Now, then, Reverend, you don't know of your own knowledge what criteria, what factors the committee took into consideration in drafting the substitute bill that was reported out of the committee?

A No, I—no, I do not.

Q You don't know whether they directly

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took into account things such as maintaining the integrity of county lines, for one factor; for another factor, trying to group districts having a community of economic interests, for another factor; or whether there were factors such as the ethnic composition of particular districts or anything else?

A No. I recall some of these factors being mentioned now that you mentioned them, but I have no way of knowing that those were, actually, in fact, taken into consideration in the—in the formulation of —of the plan.

* * *

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Q Were you contacted by any incumbent congressman or a member of the staff of any incumbent congressman with regard to congressional redistricting?

A I recall receiving a letter at one time from Congressman Cabell and I recall talking with a staff member or Congressman Purcell, not—

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but this was not a formal contact, response. Other than that, I don't know.

Q What were the substance of these contacts, Reverend?

A As I recall, the—the—the letter from Congressman Cabell was just one expressing concern about congressional redistricting and expressing some satisfaction with his present district, that is, hoping that, you know, it could be maintained and—and a willingness to—to be of help, to provide information, to be of assistance to the committee in the doing of this work. I think this was somewhat of a general letter that probably all the members of the delega—of the committee got or, if not all the members, at least the two of us who were from Dallas received.

Q And Congressman Purcell?

A It seems to me, and I—I may be wrong on this, but it seems to me, I got—I got a similar type letter, basically the same ingredients, from Congressman Purcell. I—I just recall the conversation I had with a staff member, one of his staff members. And I'm sorry, I can't recall a name at this time. I just—I just saw

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him informally on some occasion and he just expressed to me his concern about the redistricting and the effect it would have upon Congretssman Purcell.

Q What in particular did he express to you, Reverend?

A I don't know at what point in time that I had this—this conversation, but—I don't know if this was after the—some of the contents of the bill had been revealed or not. But the—the bill did remove Purcell's Dallas territory and Dallas County and place it in—in another district. And—and I believe that was the concern, yes, that Purcell would have—no longer have

any—any of Dallas County in his district.

Q And he was, I take it, not—

A Not happy about that, yeah.

Q Reverend, you don't know of any factor being taken into consideration, as I gather from your previous testimony, in regard to the ethnic composition of any congressional district?

A When I—when you—when I say I don't know, you know, simply because I had no—I did not have the privilege of actually being

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there when—when the decisions were made. I don't know of any, except that I do know that in Dallas County ten predominantly black precincts were removed from Congressman Cabell's district and placed into Congressman Teague's district (indicating). Or no, I think ten of them were placed in the new—the new congressional district, Twenty-Four.

Q That would be the Twenty-fourth?

A Yeah, the Twenty-fourth.

Q The Mid-Cities District?

A Right, the new Mid-Cities District.

Q Why was that done, Reverend, if you know?

A I don't know why it was done. I think the—the net effect of it would be to, in my opinion, dilute the voting strength of—of Blacks in the—the Fifth Congressional District and also in the—in the new Twenty-fourth Congressional District. I mean, the—the net effect was to, yeah, dilute the Blacks' strength by dividing it and placing it in those two districts.

Q Well—oh, excuse me. Go ahead. I'm sorry.

A Well, and—and then taking part of

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the Oak Cliff community, which was predominantly black, and making it up with Garland—I mean, Grand Prairie and Arlington and portions of Fort Worth, it

seems to me to be very discriminatory and does not represent any common economic interests, other com— any common, other common interests, and destroy the integrity, in my opinion, of the—the black community in Dallas by displacing, dislodging those ten—ten precincts.

Q I take it, Reverend, that you have studied the effect of this piece of legislation on Dallas County in some detail from what you have just testified to?

A I have looked at some of it, yes.

Q Well, you have indicated already that Congressman Cabell wrote you and said he was pretty well satisfied with his district and, I gather, by implication, that he would just as soon be left pretty much alone?

A Yeah, I think, as I recall again, it seems to me he was saying at one point that he had, I think, the population figures. He sent information revealing that there were—his area was overpopulated, his district was overpopulated and—

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Q So he wouldn't mind getting those ten black precincts out of his district?

A Yes. He hated to lose any—any precinct that he had. He didn't refer to those precincts, as such, except those were among those that—that happened to be removed.

Q You don't know whether, since you were not privy to the actual work on the bill, you don't know whether that was by design or whether that was pursuant to trying to achieve numerical equality or what?

A That's right. I—I don't know. Like I said, all I can look at is the net effect of it and what it would have upon the—the voting strength of the black community, which would be to dilute it.

Q I think the court could almost take judicial notice of the fact that those black precincts would tend

normally to have a higher percentage of voters voting for liberal candidates than they would for the traditionally conservative Democratic candidates or a Republic candidate?

A I would think so.

Q So that the net effect of it would be, the way the bill finally came out, that

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Congressman Cabell's hold on his seat in Congress would have been strengthened by that much?

A Given the—the political make-up, yes, I—I—I should think so. I understand that in addition to the surrendering of those precincts that there were others that were picked up, so—which—and I—which means it's not just a matter of giving up precincts from a district that was already overpopulated, but as a matter of taking on others. It was total readjustment, which meant the taking on of—of other precincts instead of.

Q And then you have indicated that by shifting those precincts to the Twenty-fourth District that their voting strength would be substantially diluted by the other ethnic composition?

A I would think so. Because given the make-up of the Fifth Congressional District prior to redistricting, the—there was an increasing number of—of Blacks in that district and the voting strength was—of the black community was gaining in that particular district. And I don't think that's a—a strange fact to anybody who's close to the political scene here in Dallas. But—

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and—and by—in so removing those precincts from—from that district, definitely. I don't—I don't see how any—how the Blacks' precinct—Blacks who were removed from that precinct could near and in any way have the voting strength in—in the Twenty-fourth

District that they had in the Fifth, because there are only nineteen black precincts in the new Twenty-fourth District and only sixteen of them are in Dallas County. One in Irving. And one in Grand Prairie.

Q Reverend, you have indicated that you voted against reporting the bill out of committee as amended in the committee?

A Yes, I did.

Q And did you also vote against the conference committee bill?

A Yes, I did. And spoke against it on the floor.

Q I take it, then, that you were dissatisfied with both measures?

A Yes, I was.

Q And let me ask you this, Reverend: I would assume from your previous testimony that one of the sources of your dissatisfaction would have been the shifting of these black precincts?

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A Oh, yes, that was a basic concern—

Q I take it, then—

A —I have.

Q —you were not appeased by the creation of the, quote, "Barbara Jordan district," unquote, down in Harris County?

A No, I was not appeased by that.

Q Do you have any knowledge of how that district came about, Reverend?

A No, I really don't. I have no knowledge, whatsoever. And here again, you know, the—I just had no input. I—I wasn't—the workings of—of the committee and drawing up the—of the bill. Although I realize that was done in conference committee, but—I believe it was. This was just information not available to me, so I have no—no idea how that was done.

Q Have you studied the effect of the new bill on

Harris County?

A I have looked at—at—at—at it some as I—. The—the effect, I do know that it would create a—a district which would make it possible for a Black, in this particular instance, Barbara Jordan, or others who might be in that district to be elected. I don't know what it does

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to the rest of Harris County.

Q In other words, you haven't made any determination that it has soaked up a number of the black districts, the black precincts that would have otherwise been in other districts in Harris County?

A Other congressional districts?

Q Yes, sir.

A No. I didn't take particular note of that. I believe it's right in the center, near the center. Takes in some of the downtown district right in the heart, so I can easily see where this would be the case.

* * *

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Q How much time did you actually have to study the bill?

A Well, as I recall, the day we voted out, the day they voted out the—the bill out of committee, and I may be wrong here, I want to be sure, but as I recall, well, I know, I didn't get to see that bill until I sat down at the table to vote on it in the Speaker's committee room.

Q Did you know that the bill was coming up for a vote on that certain date?

A No. No, I didn't, because it was very difficult to get that kind of information as to when the bill would actually—when we would actually have a committee meeting and when we would actually have a bill to vote on. As I recall, the—at the time that—that we

sat down that particular day, I think we sat in the room there for a few minutes waiting on other portions of the bill to be mimeographed, some of the finishing work to be done. And then brought—it was brought in to us, either on that occasion or on the final occasion when we met, the final bill.

Q Did you exercise any efforts to keep yourself informed as to what was going on, to put it generally?

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A Yes. But my efforts were—were futile.

Q What efforts did you use, Reverend?

A Well, they were basically of—of contacting, speaking to the committee chairman, trying to get information as to where we were and to what was happening and—and most of the information was indefinite, vague and indefinite. And so really, there was, you know, there was—you didn't, you know, I had a concern, but I didn't know how to get at it. I mean, I didn't know what—where the bill was, you know, what was happening. You would have to—you have to know what—what's being worked on and in order to fit the pieces together to know how to do your homework. And so I—I didn't have anything to go on, that much to go on, that could enable me to intelligently proceed on some work of my own to provide input.

* * *

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Q You were unaware, then, that the bill reported out by the committee deviated on the average less than the final SB 1; is that true?

A Yeah, this was brought to my attention, but I was not aware of it at the time.

Q When was it brought to your attention?

A I think during the floor debate on the bill, the

final—

Q Then are you telling me that the House knew that the bill that they had already enacted and sent to the Senate during the regular session was a better bill numerically than the bill that came back from the conference committee?

A No, I—let me retract that and say that the floor debate that I refer to was that which took place on the final vote, which was the

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conference committee report.

Q Well, my question, again, Reverend, maybe I didn't make it clear—

A Yeah.

Q —was that you indicated that you heard this mentioned, the first time you became aware that the original House bill that was enacted and sent to the Senate was better numerically than SB 1 was during the floor debate on SB 1?

A No, I retract that. No, the first time I heard that was after the bill had—had—had been passed and—and discovered that there were several mistakes in the bill and the deviation and some of the figures, census figures, in the size of some of the districts.

MR. ROSENBERG: That was not during the floor debate?

THE WITNESS: No, that was not during the floor debate. Again, I don't think anybody had any time to discover this. I think this was one of the problems we were faced with. Nobody had any time to discover this during the floor debate

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or while we were in session. I think if we had been given the opportunity to work as a whole committee and—and do some of the detail work on the bill, we probably—or had been given more

opportunity to discuss and debate it, we probably would have discovered some of these things. But —but as it was, it didn't come out until, you know, after it had passed over my objection, objection—objections.

Q (continuing by Mr. Fischman) You indicated off the record awhile ago, Reverend, that there was a sort of gentleman's agreement that the Senate would take care of their redistricting and the House would take care of its redistricting, in that both chambers would work on congressional, is that correct?

A That's right. That was a gentleman's agreement that—yes.

Q Well, tell me, Reverend, about this floor debate. Was there any, first of all, was

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there a floor debate on the bill reported out of the committee during the regular session?

A I'm sure there was, but somehow, that doesn't stick out as vividly in my mind.

Q Was that debate recorded to your knowledge?

A No. No, I don't think—I don't think the proceedings of—I don't know if the proceedings of the House are recorded. I know the committee's hearings aren't—aren't recorded. This is something we—some of us have been asking for. And I—I don't quite recall the procedure in the House right now.

Q Do you recall anyone else, anyone's specific remarks during the debate on the bill that was reported out by the committee, by the House committee during the regular session?

A No. No. I can just recall the objections raised in the—in committee that met to report the bill out.

Q Would you tell me what those were, Sir?

A Well, I have already mentioned some of them. Representative Tom Bass and I were the two persons

who were vocal in our objection on

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the committee, were vocal in our objection to the bill. I don't think anybody else objected vocally. I think we were the only two who voted against—well, there was somebody else, a Republican on the committee, who voted against it, too. I've forgotten who he is. But anyhow, Representative Tom Bass was opposed to the bill on the basis of what it—and he, as he pointed out—what it did to Harris County. And I was objecting on the basis of what it was doing to Dallas County. And I think we both were concerned about the fact that the redistricting did not originate in the cities and then move out to rural areas. We felt that—that it was discriminatory—discriminating against the city, the urban interests, and that the integrity of common economic interests were being destroyed, in the cities were being destroyed.

Q Did you have reference to any specific districts in making those remarks, Reverend?

A I had reference to especially—particularly to the—the new Mid-Cities District and I had reference to the new portions of—of Dallas County that were added to the district now held by Congressman Teague and to a portion of

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Dallas County that was placed in a district—the district of Congressman Roberts, Ray Roberts. Especially, those three, because—I think that's—I—I—I objected that—on the basis that there was enough population—these districts were being—Dallas was being used to flesh out these three districts, the Twenty-fourth, Rep—Congressman Teague's district and Congressman Robert's district. And I felt that Dallas had enough population to make up a majority of a—of a majority of another congressional district

if that had not been done.

Q Well, was this done in order to maintain essentially the integrity of those two districts or to maintain the position of the incumbents? In other words, rather than—

A Yes, to flesh out, right, to flesh out their—their districts, right. And—and it's my—well, whether or not they wanted a portion of Dallas County, I imagine this is helpful when it comes to campaign funds, to have some of the economic interests of Dallas in—in your district. I can see where this would be to the advantage of congressmen. Just enough where it won't hurt you, voting power, from a voting

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power standpoint, but enough where you can hurt the district.

Q And what did Representative Bass have to say in this regard down in Harris County?

A He was saying essentially the same thing, that the district—redistricting did not start in the cities, as I pointed out.

Q Well, did you recall any specific areas that he had in mind?

A I'm sorry. At the time, right now, oh, gee—

Q Would it help you to look at a map?

A May I see a map. I saw one a moment ago here.

Q The SB 1 map, I think, is the one. That's our new—

MR. ROSENBERG: Ignore these districts, if you would.

THE WITNESS: Okay.

MR. ROSENBERG: Because it's not the plan.

Q Oh, here's the one we want right here.

A Yeah, let me have that little deal. Yeah. Oh, I recall now. Yes. I don't have to look. As best as I can recall—see if I was

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right on that—the—in—in Harris County, the districts were not even defined, that they were left open and to be—yeah, and that that was to be done in—in committee, in the committee.

MR. ROSENBERG: Conference committee?

THE WITNESS: I may be—yeah—I may be wrong on this. And that—that—check that—I would want to be checked. But as I can recall now, Harris County was the district—for example, in Dallas County, we had five, four or five congressional districts that were outlined, carved out on the map. But in the committee report, committee meeting, Harris County was just left open as one huge congressional district to be filled in later. And to me, that's—if—if—if I'm not mistaken, I'm almost certain now, and I may be wrong, but

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this—the committee—the bill was kicked out that way and that was Representative Bass very strong objection to the bill. And it was—I think we were led—made to understand—we—that this was being done to provide leverage over Houston in—in the committee, conference committee. When the bill got to conference committee, that they would then write in the—draw the lines for Harris County.

Q Well, then the bill that came out of the House during the regular session wasn't even a complete bill, unless—

A If by—by a complete bill, you mean the fact that Dallas—Harris County—and—and please check—check that. It's just on the basis of what I can recollect. Well, I see here, this is what, let's see what—

Q Well, you're looking at a map of SB 1; now,

that's the final bill enacted in the

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special session?

A This is—I may be wrong on that, but I—I—I believe that was the case.

Q Well, that one has got it that way, as a matter of fact.

A Is this it? That's Bexar County. That's Dallas, Tarrant, Where's Harris. Yeah. Yeah, that one has it thataway. I don't see a sheet or—on—here's Bexar. Here's Dallas, Tarrant. Here's Brazoria. I don't see Harris County. What is this? Oh, yeah, here's Harris, right. Yeah, that's what it does, if you notice, Houston here. See, Houston is this—Harris—see, the four hundred and—and sixty-two thousand, sixty-two—population is all just locked right in there in a big glob, but that's—that—that would make up, you know—what—what's the size of a congressional district?

Q Four sixty-six—

A Four hundred and sixty-six—

Q —five thirty.

A Now, where is all of—is this all of Harris County here?

Q Uh-huh.

A Let's see. There's one district,

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two. Oh, (indicating) I'm confused. That was the legislative House of Representatives map that was done that way, the individual, the—those districts were left. Okay. I don't see—

Q The bill, itself, defined the districts? Did the bill, itself, define the districts?

A Evidently, it did. I'm—I'm getting House of Representatives and congressional all (indicating) tied up in my mind.

Q Well, then you don't—

A So I retract all that what I said about the—

* * *

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Q You did not become aware that the House bill was better numerically than SB 1 until after the Legislature had adjourned after the special session?

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A That's right.

Q And this did not come up on the floor during the debate?

A I don't recall. It might have. I don't recall it coming up on debate.

Q Certainly, Chairman Jones would have known about it?

A I—I would—I think he would have known about it. For example, I didn't know, you know, what happened to some of the precincts in Dallas County until after the bill was passed. It was only then that we knew what was in the bill and so that kind of information just wasn't known prior to the passing of the bill.

Q You were not on the conference committee?

A No, sir.

Q Who selected, the Speaker appointed the conference committee?

A I have never been on a conference committee.

Q And you were not privy to any—

A The Speaker—

Q —debate that went on in the conference committee?

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A No. No, I was not. I believe those were open, some of them were supposedly open to the press and to the public, but even at that, a lot of the decisions are made outside the official meetings.

* * *

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Q In fact, wasn't it true that at least just a raw head count was not available to the Legislature until well along into the session?

A I—I believe—I believe you're right on that.

* * *

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Q Now, Reverend Holmes, there's one thing that I would like to mention in this connection. You mentioned that you knew very little about what was actually in this bill, the congressional redistricting bill, until just before it was to be voted upon. And I believe that Counsel probably expressed some amazement that this type of situation would go on. Isn't it true, Reverend Holmes, that with the large number of bills that the Legislature is confronted with in each session that there are many bills, and some of major importance, that the members, the individual members, of the Legislature quite frequently don't get to see until almost time to vote on them?

A I—I would agree that it is true that there are many bills that the average Legislator does not get to see until it's almost time to vote on them. But I—I would not agree

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that, given a Legislator's particular interest in a particular bill, that he cannot discover, you know, something about that bill if he wants to on—on, in general, most—most legislation.

* * *

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A Yeah. I—where I disagree, where I'm not agreeing with you is that I don't think it's because we are so overburdened with work, you know, that we don't get to see these bills. I think there are other reasons. I agree that we don't get to see them, but I don't think

it's because we're so burdened. I think it is possible for us to have time to see these major bills, but I think there's a deliberate attempt to delay bills and wait until the last minute so that we won't be informed about what's happening on them.

Q Reverend Holmes, I have got just about one last question. It's something, a statement that, a question was asked you off the record and you replied to it. Now, I believe I would like to ask you on the record.

A Okay.

Q And get your reply to it on the record. Do you feel, as the question was asked you previously, that ethnic considerations were a big factor in the drafting of this congressional bill?

A As I look back at the final bill as

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I—and as I pointed out earlier, I feel that—that, yes, they were a factor. When I look at what's happened, as I—I pointed out earlier, to some of the—to some of the black precincts, I think they were particularly chosen, it seems to me, by design to dilute the voting strength of these black precincts. Especially when you reach in and grab ten so carefully to actually get ten black precincts, not—in the huge surrounding area and put them into one district, I have to think of it as being somewhat by design and that ethnic—ethnic considerations went into being.

Q Well, now, you are referring to one particular instance. I'm talking about the bill as a whole. Do you think this was a—

A Well, I have no way of knowing. I mean, I can only look—I look at what happened in Dallas, because I live in Dallas. And I'm not challenging, you know, the—the entire bill. I'm challenging that the Dallas portion on the basis of what I see in Dallas. You know, I have no reason for saying that same thing

didn't happen in San Antonio or Houston or elsewhere. I haven't looked at the other to know.

Q Do you think this was a big factor?

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A I think given the fact that there are no black represent—representatives in Congress right now at the present time and given the fact the growing black population in the cities, for example, in Dallas, we have got enough minority groups here in Dallas to have a—to have a predominantly minority congressional district, really. I mean there could—one could be drawn where a Black would have an opportunity.

Q In other words, you could draw it up—

A Yes.

Q —in such a way that—

A It could be drawn up in such a way that—that a Black could have an opportunity, as was done in Houston. And so—and the fact that it didn't happen here, that it was no way, you know, that it was—where we did have a possible chance, and this is a key question, for example, in the Fifth Congressional District there was a growing trend in that direction where a Black had a chance to being elected, given the make-up of that district, prior to redistricting. But after redistricting, the chances were decreased in spite of the growing black population in the

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city. So I would have to think and—that ethnic considerations were a play in the make-up of this bill.

MR. BAILEY: I don't have any further questions.

MR. FISCHMAN: We have nothing.

MR. ROSENBERG: We have no further questions.

* * *

(P. 2)

Oral Deposition of

Senator J. P. Word

(P. 2)

DEPOSITION upon oral examination, of SENATOR J. P. WORD, taken on behalf of the Plaintiffs, in the above-entitled cause,

* * *

(P. 3)

SENATOR J. P. WORD, a witness of lawful age, being first duly sworn on the above cause, testified on his oath as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. ROSENBERG: Q Would you state your name for the record, please, sir?

THE WITNESS: A J. P. Word.

Q Mr. Word, what is your occupation?

A I'm an attorney and state senator.

Q Did you so serve as a state senator during the 62nd Legislature?

A I did.

Q And in the special session thereafter?

A Yes.

Q And did you during that time serve in any special capacity

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such as committee chairman of various committees?

A Yes.

Q Was one of those committees the redistricting committee?

A Congressional Legislative Judicial Districts which handled the redistricting, yes.

Q And as far as the Senate was concerned, you were the presiding committee officer of all of the redistricting, not just congressional but legislative—with the House and Senate and State, is that correct?

A Yes, that came through the Senate. Our committee handled it as it came through the Senate, yes, sir.

* * *

(P. 5)

Q Okay, sir. During the consideration of the various bills—Now I'd like to go back just to Congressional and start restricting just to the Congressional redistricting.

A All right.

(P. 6)

Q A number of trips were made around the state by I believe sub-committees of your committee to listen to the citizens' ideas and what have you?

A No, sir, the House did but the Senate did not.

Q The House committee did that only?

A But the Senate did not, right.

Q I see, sir. Did any of the members of your committee or you make a trip to Washington?

A Yes, I went to Washington.

Q In regard to Congressional redistricting?

A Yes, I sure did.

Q And while there you conferred with Congressmen—

A Members of the House Delegation, yes.

Q Prior to that trip or just at any time did individual Congressmen then elected from the State of Texas contact you in regard to what they wished, how they wanted to see the district shaped up?

A No, not in that respect. Now, I had conversations with different Congressmen, of course, about redistricting; but I never had from any of them them tell me they wanted this or they wanted that. I guess most of it really was just offers if they could help they would be glad to help in any way that they could. I have had some calls from different ones that they sure didn't

want to lose this county or sure didn't want to lose this county or wanted

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to keep this county. I don't think, being politicians, I ever had one of them tell me I sure want to get rid of this one. I don't think I had any of that, but most of my conversations with them were restricted to what they'd like to keep. They obviously had to have some counties in their district so they had preferences.

Q Okay. You talked in terms of information being supplied you by the Legislative Council?

A Yes.

Q Is that where you received your data in terms of population studies and what have you?

A I believe that it is. Now, some of that came through the Governor's office. They have got it a little bit earlier, as I recall, in some parts of the census data.

Q In other words, all the census figures?

A But the Governor's office, as I recall now, and Rex Stallings I believe is the fellow's name that gave it to us. They bought the tapes from the Census Bureau, the Governor's office did, and they then had some of it taken off those tapes and furnished some of it to us. But basically we got from the Legislative Council; and then, of course, what they have is what we use when they actually prepare a bill because they prepare the bills. After there was agreement on what it would be, why then, they put it in correct sequence.

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Q How would that work? I don't quite understand that.

A Well, for instance, if you are working in the conference committee and you get it—the only ones I have ever worked on you usually get it worked out as best you can statewide without too much regard other than for numbers in the metropolitan areas or the

counties, Dallas and Harris. In other words, you don't start trying to draw the lines inside those counties until you have it, I mean you know you have got X-number of people here. So that is three districts there or four or whatever. So you account for it that way and then try and make it all fit; and in doing that, then they go back, and this time for the first time they used census tracts rather than an actual description, the Legislative Council did, rather than actual description of a district boundary line.

Q Of the data available to the committee you had what, a raw body count by census tracts or whatever—

A Yes, we had made up, for instance, charts for the committee. I call them charts, just on legal-size paper with the numbers different on it. For each Congressional District you'd have population according to the 1960 census and—

Q Now, were these the old districts, was that what it was?

A Yes. And then you'd have the assuming district lines exactly as they are now, then what is the population and how far off that is from the 466 that you were looking for

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give or take 200. And then we in addition to that had some maps prepared, shaded maps, that showed what counties were increasing in population and what counties were not increasing in population.

Q Did you have them for which were decreasing?

A Yes.

Q And those that remained stagnant?

A Right. Those that either stayed like they were or decreased in population were not shaded. The rest of the counties that were growing in any amount were shaded. Then we further had what the percentage of growth was in each county where there was growth

or the percentage of falling below where they had fallen below what they had before.

Q Okay. And you had that for each county throughout the state?

A Yes, sir.

Q Okay. Did you have any figures on voter registration within each area?

A Well, I know they had the book by the fellow at the University. It is a green book. It had to do with registration.

Q Did the committee work with that?

A No, the committee did not.

Q How about a study of transient populations?

A I can't think of the name. I know they sent it around and

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asked all of us to buy one, and I didn't because I didn't think it was that much interest to me. But there was one in the office there.

Q Okay, sir. Did you have available to you the studies on transient populations like in Travis County where you have a heavy student population or military population, something like that?

A No, we didn't have, and frankly had we had it I don't think we probably would have used it; because as I understand, if they are here when they are counted, that is where you count them for. And the fact that there are 40,000 students here at the University of Texas that are going to go in 900 different directions does not subtract from the Travis County population in the way we approached it. We just went with the total figures.

Q How about did you have any information on ethnic makeup, race or—

A No, other than we had Senator Jordan as a member of the sub-committee, and Senator Jordan is

fairly well versed in the ethnic makeup of Texas; and so we had a member of the committee who understood ethnic—

Q Distribution?

A —distribution. But with studies or figures we didn't have any. We didn't use any. We didn't have any as far as I know. I never did see them. The Almanac used to do that.

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I don't know whether it still does or not. The Almanac used to have an ethnic breakdown in each county, but I kind of think they have dropped that now. They may still do it. Anyway, we did use the Almanac some, but we didn't use any breakdown on that part of it.

Q I would like to go back to the population trends for a second if I can. How would you use— You have got the information, you have got the shaded areas, the percentage of growth or loss throughout the state, and then you also said you would have the 1960 districts as drawn with how they stood presently populationwise. How would you use the population trends?

A Well, for myself now I speak only, and I do know I speak for other members of the Senate committee because this is what we talked about and what we were going to try and do and what we did try and do. Redistricting is always a tough, tough job for a legislature. I don't care whether it is the Texas Legislature or New York or who it is, it is tough. And so we figured if we could take this information, I mean you have to redistrict, you don't get to make that choice whether you want to or don't want to, you know you have to redistrict and you have to do it in keeping with Baker versus Carr as best you know how. All right. With that information we would try to make districts that were growing at a faster rate than the rest

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of the state as a whole, Harris County. We tried to leave them a little bit under the norm or the 466. We tried to make rural areas where population was either not growing as fast or declining in many instances, tried to leave them a little bit higher in total population in hopes that when they do this again in 1980 that if at least some part of it will continue to grow the same and it won't be quite as hard a job in 1980 as it was in 1971. So we tried. That was our purpose and that is what we were trying to do.

Q Did you do that to each district?

A We had some trouble with the one in the Valley; because when you get to Mexico and the Gulf of Mexico, you have had it. I mean, you know, that is as far as you can go, and that one I think is one where it is either right at the magic figure of 466 or a little bit under when it probably should be a little bit over because it was an area that the population did not grow in. I don't remember the number, but it is the one right down here.

Q It is 15?

A 15, right.

Q Well, 15 is down by virtually 8,000 votes too small, 7,949.

A Yeah, 1.7 per cent. Well, that is not right if Ector is in there. That number is changed or something because Ector is not in 15. That is El Paso I would imagine from that number with Ector and then El Paso is growing.

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Q Oh, El Paso is a growing area, 16?

A Yes, El Paso is.

Q It is over 11,000. This is the plan as enacted?

A Is that the final map there?

Q Conference report on SB-1, yes, sir.

A Well, this area 15, I don't know why—

Q This should have been drawn, put there?

A Yes, right here. But this one was a problem simply because you get down in here and it just—you are just boxed.

Q Okay. And 16 you also had a similar problem because it is a growing area?

A Well, you did— Now, El Paso is growing. El Paso County is but these are not really, and even as I recall—

Q "These" are indicating surrounding counties?

A Yes. I don't even remember the counties, Hudspeth, Culberson and Presidio. Culberson shows to be increasing a little on that.

Q Brewster shows to be increasing. We don't have the percentages here.

A No, and they really don't mean that much because Brewster with 7,000, if it grows 30 per cent it still won't be a lot of people. But that is what we were trying to do. Now, we did have trouble in those two areas.

Q So you were not able to apply the plus and minus growth successfully throughout the state?

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A Well, as I say, I think we did, to my satisfaction, we did as well as we could. Now, I am not trying to tell you it is on zero everywhere. It is obviously not.

Q When you talked about seeing the map of the '68 districts and then trying to flush them out or subtract from them to make them what they needed to be for the new figures, you talk about within a plus and minus. What did you accept as tolerable?

A No, we did not set ourselves any goal as to— You mean with 10 per cent deviation or something like that or five per cent or two per cent?

Q Yeah, you said something like within plus or

minus. I'd like for you to expand on it.

A What I said is I knew that in all likelihood we were not going to be able to get it zero, but we'd try and get it as close as we could. And I say this, if you will look at this one that was drawn in '71 and the one that was drawn on the last one that they are operating under now, the Congressmen are, there is much greater deviation in it than this one. We got this one a lot closer. But we didn't set any figure of two per cent or three per cent just to see where we could get to. We knew that we were going to have to be a little under in areas that were highly populated in a high accelerated type population growth and a little over in the ones that were slower if we could.

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We didn't have to do that, we just agreed that if we could do it that way, if it would work that way, it wouldn't be as big a problem. Some of the people in there in my area have been in three different Congressional Districts in the last five years, and they frankly are not wild about it. Some of them, you know, they would like to get someplace and stay.

Q Well, how did the mid-cities district happen? Mid-cities referring to the 24th, the new one, and then the Dallas area?

A You had to decide what you were going to do with that area. Again up there that is boxed by Oklahoma and by New Mexico, and once you made the decision to combine the Panhandle District and Wichita Falls there, Mr. Price and—

Q Purcell?

A —Purcell, once you made that, put them together, why then you came out with that kind of a situation in the mid-cities district.

Q Those were the only incumbents that were put head to head?

A I believe that is right, yes, that is right.

Q Was there a desire to avoid pitting incumbents as one of the factors?

A Yes, there was. There was a desire to cause as little disruption to the people in those areas as you could and still stay with trying to do what you were supposed to do

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and that is make them as nearly equal as possible.

Q The desire to keep incumbents from butting heads would necessarily affect the shaping of the districts I would think. It appears to me you have taken the old districts—I mean this is what I believe your testimony was. You took the old districts as established and then tried to fit them into the population figures needed for the new districts, either adding some or dropping some?

A Yes, we started from that premise to do as little disruption as we had to.

Q And you felt that was the way to also district as numerically equal as practicable?

A No, if I had thought that is all there was to it, we would not have had to put those two together. We could have split some people out of Dallas and Tarrant County, but we took into consideration again that the people in Harris and Bexar as best we could, did what indications we had from them that they would like done as best we could, and certainly it didn't please everybody, and I am sure we didn't hear from everybody. Thank goodness. But we did, when you wound up with that mid-cities district, you did it because again we did just put those two together because it made a more comprehensive thing out of it.

Q Mid-cities was kind of what was left after all the other districts were formed?

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A That is it. That is it in that you've just got a wad of people in Dallas and Fort Worth and Arlington and Grand Prairie in through that area there. They are going to be in some Congressional District.

Q Seantor Mauzy introduced a plan that I will call the Buerger Plan, B-u-e-r-g-e-r, which may have also been introduced as a roadmap plan, because I think a copy of the map was on a Texaco roadmap. Do you remember seeing that?

A I don't remember. We had some before the committee that went to the sub-committee on some of them.

MR. ROSENBERG: I'll make this Plaintiffs' Exhibit 1. Mark this.

(The instrument referred to was here marked Plaintiffs' Exhibit No. 1 for identification.)

THE WITNESS: That is the one that Senator Mauzy introduced?

MR. ROSENBERG: Q Yes. That plan reduces the numerical disparities down to I believe a maximum of about 800 or 900 people between largest and smallest. The problem is that it does pit six incumbents. I'd like to look at the plan when your counsel is through and maybe you can give me some idea—

THE WITNESS: A I remember Senator Mauzy submitting a plan for the metropolitan statistical area around Dallas. I don't—

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Q You don't remember this plan?

A I don't remember the plan, but I am sure he did submit it.

Q Well then, we won't be able to discuss it too well if you don't remember it.

A Well, I don't remember it. I must have looked at at least a thousand different maps. So I am not going to say that he didn't submit it, I am sure he did.

Yeah, this one obviously starts in the Dallas-Tarrant County area and then goes from there.

Q They start in the urban areas and move out as opposed to the rural and moving in?

A. Yes, yes. It reaches out and gets the rural county in order to make up an urban district in both Dallas and Harris and—

Q And SB-1 really does the opposite?

A Well, I imagine you'll get an argument out of Denton about that; but Denton is going to think they are in with Dallas in spite of all you can say to them. But I would say this: There was some of both of it in Senate Bill One.

Q As I understand, we can go back to the first session, the regular session, the House passed a bill and sent it to the Senate. What happened to that bill with the Senate?

A We substituted a bill for it in the Senate as I recall and then went to the conference committee with it.

Q Okay, and the bill that later became known as SB-1 was the

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bill sent to the conference committee? Was it reintroduced in the special session?

A I don't remember whether— I reintroduced it, but I don't remember whether I reintroduced exactly what I had before or— We were almost in agreement on a bill at the expiration of the session.

Q Of the regular session?

A Yes. In fact, as I recall, I believe the House maybe concurred in it in the conference committee report. Maybe. I believe they did, but we couldn't get up in the Senate with it; and if you had gotten up with it, you would not have had enough time to concur in it because the Senate is not going to concur in a redis-

tricting bill in three hours. It just won't happen. So the time passed. But I just do not remember whether I took that same bill or the conference committee report. I kind of think I just took the conference committee report and introduced it, but I sure could be wrong about that because we were looking at too many. We were also working on Senatorial at the same time, and we were in the same kind of rigamorole with that trying to get a bill that we could get enough votes to pass. So it has been too long ago. I don't remember what happened yesterday well, let alone that long ago.

Q Okay, sir. The House Bill was sent to the Senate?

A Yes.

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Q Were you aware that it had less disparities in terms of numeric deviations than the bill passed by the Senate and sent to the conference committee?

A I am aware of it now. I don't know that I was at the time. I have looked at the chart there that shows the disparity.

Q Are you familiar enough with the districts to recall any of the changes that were made in the 1960 district of Senator Cabell and the new district that he will be running in? I believe it is five.

A No. Now, that is one that was hammered out right up there in the conference committee. The lines of it and everything else.

Q That was at the very end of the special session?

A Yeah, right. See, what I told you a while ago really adapts that. We didn't try and put the lines in Dallas. Once we arrived at how many people were there and how many members of Congress they were entitled to, we passed then the question of how you split those people up and talked more with Senator

Mauzy, Senator McKool and Senator Harris about that sort of thing in Dallas County, different members of the committee did and did the same thing in Harris County and Bexar County on the premise that those people there might have some idea about what the people might be interested in in Dallas, Harris and Bexar County

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more so than me from Bosque County, and that is the premise that we worked on.

Q Let me see if I can get it straight. What happened with it went to the conference committee during the special session, whether it was just sent in one big block and said draw three districts?

A No, I don't think so. I think by then we had had enough. At that stage we couldn't have passed one in the Senate. I know we didn't pass a bill in the Senate that no member of Dallas or Tarrant would have voted for unless there were some lines in it so there were some lines in there. But what I am saying is that when we were working on them initially, on a map for instance, just setting down with a piece of acetate drawing a map, why, you just put three districts in Dallas and then go on. You didn't go get the information that you had to have in order to divide the county into three districts, and we came back later then to all of those areas. But we would have had them in the bill when it passed, yes, sir.

Q So could I sum up and say really the rural areas were drawn first, and then the fights about the urban areas, how you are going to divide up those three or four districts were left alone? You already knew the perimeters of what those three or four districts would be?

A Well, except— Let me have that map. Let me look at this

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one right here just a minute. If you start right here in Dallas County, and I don't remember the population of Dallas County—

Q I am afraid I don't either.

A —but they were not entitled— they had more than enough for three as I recall and not quite enough for four, and that is where the mid-cities in Tarrant County had more than enough for one and not enough for two. So you come in once into this area here, and we did almost the same thing Senator Mauzy did here except that we left the lower portion of Tarrant and the lower portion of this in the district that it is in now, number six. Then you added Denton County up here and that gave you enough for the— to take care of the extra Congressmen, but it is wrong to say that you just say no matter what you'd just start there because you can start right there and we did in many instances right there but—

Q Where is right there, Senator?

A From Dallas or Harris County, but even then you start with how many Congressmen are they entitled to on the basis of their population and then what do you have to add to them to bring it out. So it is not right to say that— As I recall, Dallas County had a fairly substantial population of over three, and that then is what caused this; and, of course, you know that doesn't mean a doggone thing.

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Q The way it is drawn on this map of SB-1?

A Right.

Q I understand, Senator.

A And here now, this gives to Harris County four Congressmen, and you may figure it any way you like, you know. It takes Fort Bend and Brazoria and puts it in with Harris County in order to entitle them un-

der a strict numerical plan to four Congressmen.

Q All right, sir. You are looking at a rough map of SB-1?

A Right.

Q When you had this completed in the conference committee, was it at that time did you take what you had in terms of the district and then recalculate at the end how many were in each district? Once you had drawn these lines—

A Oh, no, no. If I understand what you are saying, we take a big map like that and put a piece of acetate, and then you just start; and you can—we have started in every place. We have started there and there and there and, you know, I guess we at least tried a hundred different maps, and whichever way you start, you were going to 466,000, and so that is— you didn't just run a line out there and then add up to see how many you had if that is what you asked me. I think that—

Q What I am saying is when the conference committee, you were on the conference committee?

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A Right.

Q When the conference committee finally resolved that they were going to bring out of conference and submit to the floor of the two bodies, did you at that time ascertain, you know, what exact numerical body counts were in each one of those? You knew you were going to have some variances?

A Oh, yes. You mean did we verify our figures according to our map?

Q Yes.

A Yes, sir. Yes, sir. And almost always you find a mistake. We were working on one one time, and we finally got— I wish we had saved it because we finally got it down to where it was just right on the money with, this has been four or five years ago or six, but

it was right on the money; and when we got it, everybody looked at it at 3:00 o'clock in the morning, the happiest bunch you ever saw, finally going to get through. We totaled it up and we had 24 districts instead of 23. That is just one of those things. You just looked at lines until it just didn't work.

Q Okay. So after we had the lines established then there was another count made to find out exactly what was in each one because you knew you were going to have some variances. At that time did you then try and go back to see if you could readjust—

A Oh, yes. All this was grease pencil work; and then, of

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course, you were working with census tracts in the cities, and if there is a census tract over here of 2,306 and another one right beside it of 5,000 and you needed 5,000 instead of 2,306, we made the changes. Yes, there were changes made like that all over all the time, constantly, and probably even at the last minute, you know; but all these lines were grease pencil lines, you know, and if you had to take another count somewhere else, why, it had to go.

Lampasas. I represent Lampasas in the Senate, and I went up there and met with different groups of people and they asked for one thing and one thing only. They said put us in this district or this district or this district.

Q Pointing to 17, 21 and 10?

A Well, it would have been Omar Burleson who is now the Congressman, and said leave us with Mr. Burleson or put us back with Mr. Fisher, we used to be with Mr. Fisher or put us with Mr. Pickle, and we have got something in common with all those people there and that will be fine. They said that is all we have ever asked of you since you have represented us.

And I couldn't do it. It just wouldn't fit there. It is now in with this one, which is the one they didn't want to be, but it took it in order to work it all out; and Lord knows I would have lot rather put it where

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they wanted it to go.

Q Okay.

A But there were some changes made and always were, you know, right up to the end.

Q Were there some of the members of the House or Senate that were, say, trying to give you some input or were concerned about drawing districts for themselves that they wished to run in?

A Well, we started out with some of that but we didn't wind up with very much of it because of what I said initially, and that is, that we decided that we'd do it with as little disruption as possible to the existing districts. Once we made that decision a lot of that kind of went out the window.

Q Wasn't there some controversy in the conference committee between Wilson and Haynes?

A Yes, sir, there was much controversy. And at first you asked me about that map awhile ago, the first map I set over there was smaller deviation.

Q I don't have that map, sir.

A Well, when you get it, you will notice in East Texas it just makes a backward C. What it did, it had to go all the way around that way (indicating) in order to get Orange County in a district here without getting Angelina County into it where Senator Wilson wants to run. So we didn't

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start out to fix it where Senator Wilson could get elected to Congress or Mr. Haynes could get elected to Congress, but did not take into consideration that one wanted the other one left out. We just put everything

in there and let it go. I don't know what will happen whether they will run or won't run. I guess a lot of that depends on the trials taking place right now on what they will do.

I am not telling you that people everywhere didn't press upon us at different times, you know, how they'd like for this to be or how they'd like for that to be. Senator Kennard visited with us several times, Senator Mauzy, Senator McKool, Senator Watson, Senator Wilson, Senator Bernal, Senator Blanchard out in West Texas and Senator Christie was very interested in the El Paso area. Senator Patman was very interested in it.

Q That is Congressman Patman's son?

A Yes.

Q A lot of the Congressmen, of course, had a vested interest in seeing how these—well, let's say an interest in seeing how these districts were drawn?

A Yes.

Q What did you find the committee's purpose was in visiting Washington?

A About all that trip accomplished as far as I personally was concerned, it reassured the Congressmen that while they

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were up there doing their job we weren't going to be running around down here trying to just kill them for the practice, you know, that we weren't going to do what you said a moment ago. We weren't going to set some fellow up in the Legislature to run against any incumbent Congressman. We were going to start on the premise that the people of Texas would like to have some continuity in the people that represents them. If that were not so, they wouldn't have elected these people in the first place, and that we would not do any more—we wouldn't tear up a district just to be tearing

up a district no matter whose it was or what his political philosophy was. I am a conservative by nature, but I have got an idea that if you ask Bob Eckhardt, he will tell you that I didn't tear his district up just because he and I don't agree politically on many things; and I don't think the Legislature did. I don't think the Legislature has got any philosophical grounds particularly on Congressional redistricting.

Q It is kind of like continuity is an asset as is their seniority?

A As long as they have that system, as long as they have the seniority system, I think it is an asset. I don't think it hurts Texas that Wright Patman is chairman of the banking committee. I don't think it hurts Texas that Mr. Teague is chairman of veterans affairs and vice-chairman of space

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and aeronautics. And I don't think it hurts that Mr. Fisher is armed forces or that Mr. Burleson is on ways and means, and there are a lot of others that I can't remember. But if you can give them a district that is populationwise all right and still have that, it looks like to me you have got the best of two worlds.

Q Of course, there is the question always of conflict, do you design just for the numbers or keep in the back of your mind all the time we have got Congressmen to protect?

A Right. Well, I don't think the Legislature ever decided to protect a Congressman. They just wanted to assure the Congressmen they were not going to go out of their way to harm them. You may be just saying it a different way, I don't know. But I imagine you can imagine there were some members of Congress that figured when I got appointed chairman of the thing that they didn't have much of a chance of surviving a session down here and staying up there and doing their

job, and what I really wanted to do on the trip was to assure them that I didn't take it upon myself to decide who ought to serve in Congress necessarily and who ought not to, that as far as I was concerned they had all been elected and just as entitled to stay there as I was if I keep getting elected.

Q Senator Jordan was rather interested in one of the new districts in Houston or the drawing of a district in

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Houston. Did she give some input to you or the committee on—

A We visited with her. We visited with Senator Brooks, we visited with Senator Wallace, we visited with Senator Grover. Now, as I recall, she was a member of the sub-committee and as such worked on the whole thing; but she did not just work on Harris County, and she did not just work on something she was interested in, she worked on the whole thing. I think it is true, I know it is true she wants to be in Congress, wanted to be then and wants to be in now and I guess is going to run. I notice from the paper. But she doesn't have a district that is tailor-made for her any more than—

Q Her district did seem to pull together about all the black and brown in the area of Houston in that central city district in Harris County.

A Well, I suspect that if we had split the blacks up and given a few here and a few there, you would have really been hollering at us about that.

Q Was there some hollering about that in the Dallas area with the blacks being split up?

A Yes, that is right.

Q Congressman Cabell received some new districts and had 10 black precincts removed or 10 alleged black precincts removed from his district.

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A I don't know where that was. Senator McKool, although he was not on the conference committee, met with us at the conference committee stage and stayed with us all the time, and he had something to do with moving different ones around different places in Dallas.

Q Okay. What do you recall about the final debate of the bill on its acceptance in the Senate, proponents and condemners?

A I don't really remember. There was very little debate when the conference committee report was finally adopted. I was recognized and made a motion to adopt the conference committee report. Senator Kennard I believe spoke against it. Senator Mauzy voted against it I know. I don't know whether or not he spoke against it. I'm sure that—

Q Do you remember what some of Senator Kennard's objections were? Has he stated them before?

A No, I don't. I think that is on tape over there. If you need that, you might get that.

Q It was recorded?

A We have had a deal put in over there now. Whether it was on or not I can't tell you; but when they put in the new PA system in the Senate Chamber, some of the deals they can record on tape in the back there.

Q So you don't know whether these were recorded or not?

A I don't have any way. I was on the floor, but I don't even

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know who is responsible for turning on the machine or who decides what goes on and what doesn't, but Mr. Schnebel, Secretary of the Senate could tell you.

Q Do they ever transcribe any of these floor de-

bates off the tapes?

A I have never seen it.

Q To your knowledge?

A It's never been done before this year that it has even been recorded. This is the first session we have had microphones in the Senate.

Q This last special session?

A No, the last regular session and then the special session, too. So to my knowledge the only thing that has ever been recorded to my knowledge heretofore before that was committee meetings and that sort of thing. Sometimes they recorded those. But floor debate and that sort of thing as far as I know has never been recorded, but it was some of the time during the regular session in the special session this last time because they had the equipment to do it with.

Q Okay. Now, in the committee work and probably in the conference committee work you must have known that if you were a certain per cent off you'd have to redo it?

A No, the way I read the cases, if we are not mathematically exact and can't justify any deviation from exactness, it is

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not going to stand up. I don't know whether it will stand up or not. Our goal was mathematically exactness. Now, we didn't make it because I have still got —if I am handling the bill, I've got to get the votes to pass the thing somehow somewhere, and while I recognize that courts have just said that is not a part of it, it is a part of it in that if you don't pass it, you are where we were with this other and it goes to the board except that doesn't affect Congressional the way I read it it just has to do with the Legislature. Sometimes somewhere you finally have to pass one; and as I say, I hope, I hope I am around to see although I know I

won't be a member of the Legislature, I hope I am around to see in 1980 if the growth pattern did make any significant changes, and I don't see where they are.

MR. ROSENBERG: I think that is all, Senator.

CROSS EXAMINATION

QUESTIONS BY MR. QUICK: Q Senator Word, I have a few questions to ask you. Mr. Rosenberg brought up the question of House Bill No. 782. I believe that designation was given in the regular session, is that correct?

THE WITNESS: A It would have been in the regular session I know. I don't remember what the number was, but we only had the one bill in the special

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session so—

Q Well, in other words, the House committee substitute for Senate Bill One in the special session had a 2.5 deviation, is that correct?

A I don't frankly remember, but let's see what this is. Regular session House Bill 782, and this is where we substituted. The reason it is so big is because it was just a bill I introduced with one change somewhere so it would be a change, but it is existing—

Q Which bill are you talking about now?

A It is our Senate amendments to House Bill No. 782 where it shows 19.04 deviation. There wasn't anything except a vehicle to get the conference. In the time I have been in the Legislature, and I think that encompasses most of the time that there has been any redistricting going on, redistricting bills is a Congressional bill written in the conference committee, and you have to just finally get down and hammer it out and get an agreement out of both houses.

Q Now, when you introduced the first bill in the special session, what was its designation?

A Just simply a one.

Q And what was the deviation shown on that bill?

A 5.83.

Q And what did the House do with that particular bill?

A Well, the House just substituted their bill, of course,

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that they had had previously and we go back to conference.

Q That was the original House Bill 782 in the House?

A I don't know. I suspect that it was. It looks like it was according to this. 2.5 here and 2.5 here and—I feel sure that is what they did on the same premise, you are going back to conference committee, and the sooner you get there you can get around to getting it done.

Q So the conference committee in the special session had before it a bill with 2.5 deviation as the maximum and yet came out with a bill which had a deviation of 4.1. Could you tell me what the reason for that was?

A Well, I can show you here like on 13 and 16, districts 13 and 16. Now, 13 as I recall is Mr. Purcell and 16 is what under the bill? Here it is, this is it. 13, that is Mr. Purcell and them combined with Mr. Price. That is in an area where the population is not growing at the rate of the rest of the state and not as fast as is this over here, same thing, and then the 1.4—

MR. ROSENBERG: This over here was 16?

THE WITNESS: Yes. Let's see what this shows 16 on here. 16 and 13 are the ones that are high 2.4 or over, plus, and 15 is 1.7 under, and 15 is this one down here where it was just—this one really, I don't think you'll have any trouble seeing it because if you go—

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MR. ROSENBERG: That is 15?

THE WITNESS: Right. You are 1.7 under in 15 at 458,000.

MR. QUICK: Q Now, you are referring to what the result was in the final bill, is that correct?

THE WITNESS: A In the final bill, right where it is 1.7 below here. It needs seven nine forty-nine. 14 is 467. So if you take that many away from this one and give it to this one, then it makes this one short.

MR. ROSENBERG. Q But you could take 1,300 out?

THE WITNESS: A Oh, yes, yes.

MR. ROSENBERG: I am sorry, I am questioning out of turn, Senator.

THE WITNESS: That is all right. If you go according to— If you don't have any regard at all for splitting the county lines, then you can do what you say. You can take any number of people out of here and increase a few out of here. You can get it on exactness if nobody in Corpus Christi ever finds out that you ever put them down here in this district when they were in this district where they have always been. But it is that close, 1.7. I don't know whether it will stand or not, and that is I presume why we are here.

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MR. QUICK: Q Well, I gather then that what created some of the problem between the bill that had a 2.5 deviation, which I understand came out of the House, and the bill that was finally enacted by the conference committee was the result of the population scarcity in North Texas, is that correct?

THE WITNESS: A Well, in the Panhandle and in West Texas, you can almost draw a line from right here down this way (indicating), if you are drawing an imaginary line and it changes.

Q Senator, would you describe what line you are talking about, from where to where?

A Well, start up here in Childress or Hardeman, right up there in the corner on the Red River at the Panhandle and then just draw a line generally south and stay west of San Antonio and come back out this way (indicating). This area out in here is not growing like this area is over here (indicating).

MR. ROSENBERG: The area west of the line is not growing as the area east of the line?

THE WITNESS: That is right, and that is fairly obvious if the districts are the same population or pretty close to it.

MR. QUICK: Q What kind of problems does that give you, that scarcity of population out in West

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Texas, what does it give you?

THE WITNESS: A Well, I don't know what you call a map drawer, what, a demographer or something like that, but anyway when you have them all right here, you have a tremendous population center here (indicating).

MR. ROSENBERG: That is 24?

THE WITNESS: No, that is in the Fort Worth-Dallas metropolitan area. Then you have in the Lubbock area another large group of people. You have in the Amarillo area in the two counties, Potter and Randall, a fairly large group of people, and then you have in El Paso a large group of people that is surrounded by a very, very small amount of population, and then in San Antonio, of course, you have a large group of people, and then the whole Gulf Coast area has, Harris County and Galveston although Jefferson and Port Arthur and over in that area lost some population from '70 to '60.

MR. QUICK: Q What I am trying to get at, and

I am not sure I have gotten it yet, is what was there about the 2.5 deviation bill, which made it unacceptable to the conference committee? Unacceptable to the extent that you came out finally with a 4.1 bill?

THE WITNESS: A Oh, probably this East Texas area over here had as much to do with it. That

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bill again had this deal in here, you know.

Q What are you referring to?

A The backwards sea where you had Orange County in here and it went all the way up to Henderson and around this way, and then here in Angelina County right here, left it, you see and came around it like this (indicating). That was one of the problems.

Q What was unacceptable about the backwards sea?

A Well, it was unacceptable in that the Senate members thought it was just a way of letting a House member run for Congress unopposed—or not unopposed but without being in a district with an incumbent, not unopposed. I am sure he didn't ever hope for that.

Q But in other words—

A It was obvious to me anyway that that is where it started and that was the premise it was drawn on, and then I can't tell you, I mean I can't remember offhand, but there would be a county or two here or there that they had to change in order to do that over there that wouldn't satisfy me in the area I am familiar with. It wouldn't satisfy Senator Mauzy in the area he is familiar with and the others. So we didn't draw it on that basis.

Q So in other words, in order to change one district in deep East Texas around Angelina County, this resulted in changes over the whole state, is that correct?

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A Yes, sir. Any time in any of these that you move, wherever you start, it creates problems at any end you go to. Now, I know Senator Mauzy and Senator McKool submitted us a plan one time that just did this little deal here, you know (indicating).

Q What little deal?

A Dallas and Tarrant and a few of the surrounding counties around there, and, you know, I could do that. This is my area of competence if I have any is in my home county and around in that area there. It is very simple for me to draw a Congressional district that I like, that the Congressman likes, that the people in that area like and that most people will be satisfied with now; but, you know, you can't just quit there. You don't get to pass them one at a time, you have to pass all of them together. So you can't do that. That 11th Congressional District doesn't satisfy everybody in that Congressional district, I guarantee you.

Q What were the chances of passing that 2.5 bill?

A Oh, well, we had no chance of passing it. We couldn't even get the conference committee to sign it. They just weren't going to do it on that basis. There were many newspaper stories written about the backward sea or whatever you call it, crawfish or something, I don't recall it now how it was done, but it obviously started over in this

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area over here (indicating), and we wouldn't go with that.

Q How much communication did you get from people around the state in the way of indicating that they wanted to stay in various districts or get into various districts?

A By pieces of mail. I can't tell you. I have over in my office I have in the files what I received; and then, of course, I did have many telephone calls. But I

don't, frankly don't count it. When I go to paying attention to that kind of thing, why go getting it both ways on the thing? When I get a hundred letters from Brown County saying they're pleased with Mr. Burleson as their Congressman, well, I take it they are if I don't have any that say they want to get rid of him. Or McLennan County or whatever. But to give you numbers, I can't give you numbers. But I had enough to make me believe that the people of Mr. Eckhardt's district are fairly well satisfied with Mr. Eckhardt. If not, the people in that district ought to get rid of him and not me or keep him or whatever they do; but it is not my place to make that decision as a member or the Legislature or as chairman of this committee.

Q What was the overriding consideration that your committee gave, or rather the conference committee gave, to coming up with an acceptable bill?

A I think really the basic thing that everybody finally pretty well agreed on was that we would make these districts

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as near as we could possibly make them and pass it, to zero deviation, and that we would attempt, where we deviated, we would attempt to make the areas that were not growing as fast a little bit over where as they fell in population they come into the norm, and the ones that were growing fast, as they grew, would grow into the norm. And I still think if you will go through at least 22 of them, you will find that is pretty well where it works out, but we did, as I say, hit a problem with number 15 and number 16, but that is what we basically decided on.

MR. QUICK: Thank you, Senator.

RE-DIRECT EXAMINATION

QUESTIONS BY MR. ROSENBERG: Q Okay. You were referring to some figures to refresh your

memory.

THE WITNESS: A They are figures that the Attorney General's Office has compiled.

Q Right. And they do comply with your recollection of the breakdown of the districts? You have been using them to testify?

A I think so. I am sure that they just took the numbers off of the districts. I'd almost be willing to bet there is a mistake in it somewhere when you put that many numbers together. That is what happened to us all the time, but it looks like to me it is about—I think it pretty well shows what we did. They introduced a bill in the House.

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I substituted in the Senate a bill that I introduced, and I believe I explained to the committee that this was a bill that made no particular changes, that we were going to hold some hearings, the sub-committee was, that we were going to go to work on these things, and that we'd go with—we knew that this was not going to be the final form of the bill and no intention of it being the final form of the bill. We were going to the conference committee, and we'd iron out the thing in the conference committee stage.

Q All right. You have also looked at a map of shaded areas red and green that was a map that shows growth or loss of population over the 10-year period, 1960 and 1970 census.

A Now, that was also prepared by—

Q The Attorney General's staff?

A He colored it.

MR. QUICK: Off the record just a minute.

(At this time there was a brief discussion off the record.)

MR. ROSENBERG: Q Going back to the figures between the 2.5 bill and the 4.1 bill as referred to by

the Attorney General's Office, I'd ask you to look at 13 and 16 on the map. 16 being here and 13 being here..

THE WITNESS: A Right.

Q Both of which—I believe 16 is a gainer, is it not, in population, the El Paso district?

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A You had something here a minute ago that shows it. Yeah. See, he was down this much, five per-cent under, and then in '70 he is still 32,000 or seven per cent under.

Q Right. What I am saying, though, is 16 has gained population in 10 years from 394,000 to—it is about 50,000 more.

A I think it is true—I know it was true in Sena-torial districts that no Senatorial district lost popula-tion from '60. Now, I am not sure about this.

Q This is Congressional districts. I'm talking about in particular number 16.

A The point you are making I think is that it did increase in population, and it did but not as much as the rest of the state. That is what I was getting at.

Q All right, fine.

MR. QUICK: Let me interrupt here for just a mo-ment if I may. The figures shown on this are drops or percentage deviations from a numerical average based upon the total state population. So even though district 16 is shown on this chart here as having increased from 394,000 to 434,000 some odd, it is still under by seven per cent from the numerical average.

THE WITNESS: It was still further behind.

MR. ROSENBERG: Q I understand, but in

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absolute numbers that district is a gainer, it is not one of our loss districts.

THE WITNESS: A No, I don't think there are any loss districts.

Q In comparing the 2.5 to 4.1 we see that 16 under the 2.5 bill had 364,000, which was below the numerical equivalent by 2,392. The 4.1 bill was 477,614 or 11,000 over the equivalent.

A Right.

Q So it is in an area that is gaining population?

A But not as fast as the rest of the state.

Q You say there are no districts that lost population?

A There is one. Let me see. These four, five.

Q So there were five districts that actually lost population?

A Five districts that actually in the counties that were in the district put in there based on the '60 census, those same counties if you had left them alone would have actually lost population and that included both the De La Garza district down there we spoke about. That included the Price district up in the Panhandle and—

Q Okay. Well, the 13th district and the 16th district are the two largest districts numerically?

A Yes.

Q The 13th is the largest with 11,326; and the 16th is next

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with 11,084, only 200 and some odd difference.

A The 13th district took in what was the 16th, which was White—not White, I am sorry, Price, which was one of the big losers you see in population of 17 per cent, and that is one reason, one of the reasons we went that way.

Q I am just really looking at the population trends, though.

A Right.

Q In applying those trends to the differences between the 2.5 and 4.1 bill, the 16th—

A You have some trouble with El Paso.

Q Have a lot of trouble. It is the second biggest district in an area that is losing population.

A That is the way it should be.

Q In an area that is gaining population.

A But it is not gaining like the rest of the state is.

Q Not as fast but applying the trend—

A It was also one that was under five per cent, one of the big ones under.

Q But the first time in the 2.5 bill it was smaller in population.

A Yes.

Q So it would have fit the population trend formula?

A I can single you out any district out of any bill and say that that district is a better district than the one you have in this bill.

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Q Well, I am trying to see how systematically the population trends were applied and whether applied to each one.

A I think I stated in my testimony that we were not able in every instance to do it, but that was our purpose, that is what we were striving for, and we didn't quite make it in an instance or two.

Q Okay. 13 is a population gainer or loser? It is a strong gainer?

A No. You see, 13, it is not the same. You can't look at this and come up with it because you've got to count it with 18, you see, because—

Q Let's just look at the map.

A Because they are the two that were combined, see, 18 and 13, districts that were combined. But, you see, you see Denton—with the mid-cities district, that is the high growth area in that county. Back west there are no high growth areas. You see, Price district

here was under—

Q We don't have any figures— What we are saying is we don't have any figures today of what those same counties were in '60?

A Yes, sir.

Q Of 13 as it is drawn today?

A As it is drawn today? Yes, that is what this is.

Q But we don't have the '60 figures?

A For the 13—

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Q Take any district. What I am saying is we are taking the 13th district as we have it drawn by SB-1.

A Right.

Q And enacted. We don't have the 1960 census figures for the 13th as it presently is. We have what the 13th was in '60—

A No, I have what it presently is. Here is the 13th, and this is the figure as it presently is. It is 505,000. It is way over.

Q Okay, sir.

A But that includes Denton County, you see, the way it presently is. See your map there?

Q Right.

A Now, that is the reason when you take Denton County out, you see, and it goes into the mid-cities district, you take out the big growth county in that district. But this figure here—

Q This does not reflect Denton County?

A Yes, it does.

Q So that is not the figure for the 13th as it is drawn?

A Yes, it is.

Q As it is drawn?

A Now, wait a minute. As it is drawn is right here. The 13th as it is drawn is right here, but you said as it is.

Q Okay. As it is drawn—

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A We are missing one another.

Q I think we are missing each other.

A Yes.

Q The 13th as it is drawn today has 477,856 people.

A To go into effect in '73.

Q Yes.

A Yeah, that is right, that is it.

Q All right. Now, this same area represented by the 1971 bill, we don't have the figures of what that area encompassed in 1960?

A No. You mean the numbers of people in it?

Q Yes.

A You don't have it because they were combined. It would be a simple matter to get it to you but—

Q It would have to be calculated, we don't have those figures now?

A No, no. We made no attempt once we arrived at a new district based on '70 figures, then we didn't pay any attention to '60 figures, and I think that is what you are asking me is what would the 13th the way it is drawn including the Panhandle, have been in 1960, and I don't have the figures for that. I could get you figures for it very easily.

Q Isn't that the only valid way to compare population growths for the new districts, to see whether it is in reality a

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growth area or a loss area; because if you are taking a big growth county out of what used to be in 13 like Denton County, which is a big growth area, take it out and—

A Maybe I misled you somewhere. I also have over there the growth pattern of each county. I have that

over in the office that is not reflected here that, of course, we checked against that. That is what you are saying, I think.

Q That is what I was trying to say.

A Yeah, I do have that. I do have each county—Yes, I have each county in the State of Texas and what its percentage of growth was.

Q From '60 to '70?

A Right. Or was not if it lost.

Q Right. Do you have the numerical values for them too in absolute numbers or do you just have percentages?

A Senator Patman had that all worked out on what you are talking about.

Q I don't mean particularly the 13th, sir.

A Well, I mean on all of them. He had every county and gave it an arbitrary figure so he could put it all on a computer, but I do have percentage differences, yes, between the years and I can furnish them.

Q But you didn't have the number differences for each county between the years?

A Oh, yeah.

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Q You did have that too?

A Yeah.

Q Okay.

A Every county in the state we had what it was in '60, what it was in '70 and what that difference is.

Q In terms of percentage?

A Right.

Q Thank you, sir.

A Give or take.

Q Would you append that to the deposition?

A Yes, I sure would.

MR. ROSENBERG: I think we finally got at least where I wanted to be. I am sorry it took so long. I ap-

preciate your time. I pass the witness again.

THE WITNESS: Thank you.

MR. QUICK: No further questions.

* * *

(P. 1)

Oral Deposition of

Delwin L. Jones

ANSWERS AND DEPOSITION of DELWIN L. JONES, a witness produced on behalf of the Plaintiffs, taken in the above styled and numbered cause on the 23rd day of December, A.D. 1971, before William D. Hardin, the official court reporter of the 110th Judicial District of Texas, in the offices of BRUMMETT & BRUMMETT located at 2215 50th Street in the City of Lubbock, County of Lubbock and State of Texas, in accordance with the agreement hereinafter set forth.

* * *

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Q Okay. With that understanding then, Mr. Jones, I will go on or proceed with the questioning. For the record you were elected to the House of Representatives and served and you are still serving in that capacity, is that correct?

A That is correct.

Q For the 62nd Legislature?

A That is correct.

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Q And what district is that from, Mr. Jones?

A That was at that time known as District No. 76, Place No. 1.

Q That is here in Lubbock?

A That encompassed Lubbock County, Hockley County and Terry County. We have three house members from that district at this present time, Place 1, Place 2 and Place 3.

Q They all run at large?

A That is correct.

Q You were appointed to serve as chairman of the

redistricting committee or committee on redistricting at the regular and special session?

A Yes, that official name was Congressional and Legislative Districts Committee.

Q And under the rules of the House, I take it, you were appointed by Speaker Mutscher?

A That is correct.

Q Had you applied to be on this committee, Mr. Jones?

A Well, actually each speaker that I have served under has had each of us submit a request for committees that we have a preference for and this was one of those for which I submitted a request, that I be a member of that committee.

Q Had you ever served on this committee before?

A No.

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Q Had you made a special request to chair that committee or was that done under the rules of the house?

A Well, ordinarily you submit your requests for committee assignments and then the speaker determines the chairman when he makes the appointment. If you have an interest, mine prior to this had been in agriculture and I had indicated that I was willing to serve as chairman of any committee that I requested, but I had a primary interest in agriculture. This time I indicated that I had a primary interest in the Congressional and Legislative Districts Committee. I also listed agriculture and I believe—well, two or three others, I don't recall the others in particular.

Q You don't know what factors Speaker Mutscher considered in appointing you to this committee or appointing you as chairman, do you?

A No. You would have to ask him about that.

Q What was your interest in serving on this com-

mittee at this particular session of the legislature?

A Well, of course, I felt that this was one of the areas that are vital in drawing up the districts for the entire membership of the House and also of Congress, and in my opinion it is the basic structure for a ten year program for your legislative districts. Of course, it will have a vital role in any legislative matters in the future.

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Q Tell me how you went about structuring your committee after you had been appointed chairman?

A Well, the first thing I did was to try to determine a starting point for redistricting of the entire State of Texas because this would have a bearing in my mind of the structure of the sub-committees and I came up with what I called a quadrant division of the State of Texas. In other words, set up four geographical areas that were drawn along the physical boundaries of the present house member districts. This may be a little long but I need to get it all in to make it clear. Once I got that division made I then worked on the basis of appointing sub-committees to work within those geographical boundaries to come up with basic recommendations for districts. And these sub-committees that I appointed had no member from the geographic area that they were working on. In other words, each member that served on a sub-committee—for example, in this area out here, in the northwest quadrant were from other parts of the State. They were not residents of nor serving from this particular district or area.

Q I take it that that was done in an effort to achieve some semblance of impartiality?

A That is correct. We were trying to negate any feeling of personal—personality interest I guess in the drawing

of the particular lines within those districts.

Q Mr. Jones, was the entire committee appointed at the same time or were you first appointed chairman?

A No. The entire total assignments were made at the same time.

Q In other words, you didn't have any hand in picking who was on the committee?

A This is a priority or prerogative of the Speaker. Of course, when they announced the entire committee, well, I am not even sure that they designated by name that I was chairman, but the first name on the list is always the chairman. I believe in reading out the assignments I was—my name was read as chairman.

Q In any event you grabbed up the gavel or cudgel as it were and acted as chairman?

A Well, I was designated as chairman either by list, being number one in the assignment or by designation, I am not sure which, but I knew I was chairman of the committee.

Q You organized no, as I understand it, functional committees? That is, one committee to work on a congressional bill and one to work on a house bill and one on a senate bill or anything like that?

A No. The same sub-committees served in the same capacities. In other words, gathering information relative to the total

redistricting.

Q Did the Speaker meet with you at any time other than in the full committee with regard to the work of the committee?

A Of course, chairmen generally give progress reports and I know that I kept him posted, I don't know whether you would call it a meeting as such or not, but

I would try to keep him posted as to the public hearings that we were having and just the general routine that we always have in a function of the House.

Q Did you submit written reports?

A No, I don't believe we did.

Q Did the speaker ever indicate to you other than in the full committee any criteria that should be followed by the committee in performing its work? That is, what you should consider in drawing up the districts?

A I don't recall any submission of anything other than the fact that I was chairman and generally the Speaker's office supports the chairman of all the committees, you know, whatever direction he takes.

Q Did—

A His—I believe that there was one—I remember one particular thing or suggestion he gave me, after I was chairman, of course. I presented it to him in this manner, "You have served as chairman of this committee, now, what

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should this committee do that maybe your prior committees did not do?" And the one point that he emphasized to me was the one that we should set up, hopefully in his opinion, some public meetings throughout the State so that the people of the State of Texas could have a voice in expressing their opinions as to what they thought should be done on redistricting. And as far as I recall that is about the only general recommendation or the only specific recommendation that he had. His other comment was this, "As chairman I should become more familiar with the subject than anybody else." And that I had an awful lot of work to do and that I would have to get with it.

Q He made no specific suggestions either to you or to the committee as a whole, either in a formal meeting

or on an ad hoc basis as to what criteria should be followed in performing the work of the committee particularly with reference to congressional redistricting?

A No.

Q What—it is my understanding, Mr. Jones, in order to give the committee some formal thing to work by, that is, under the technical rules of the House, you introduced a bill within the first 60 days of the session, is that correct?

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A I introduced what I call the Caption Bill. In other words, it said it shall be a Congressional Redistricting Bill, something similar to that wording. And if I recall correctly we actually introduced the bill that was used for the prior redistricting for Congressional purposes, knowing full well that we had 24 Congressmen authorized under the new census figure and that that prior district bill had only 23 districts. And this was one of the mechanics of starting—having something to start with.

Q Strictly a mechanical type—

A That is correct. And this bill was then referred to my committee and we all—I think everyone was well aware that that particular wording would be changed extensively.

Q You used the pronoun "we introduced," is that a papal we or does that identify the group of people that introduced the bill?

A Well, I believe, if I am not mistaken, that I was probably the only author of it, and it may have had my vice chairman as co-sponsor, I am not sure.

Q Who was that, please?

A Clyde Haynes was Vice Chairman.

Q He was officially designated as vice chairman?

A That is correct. And—

Q Is that done under the rules of the House or is

that some-

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thing your committee did?

A No, this is one of the rules of the House. The speaker appoints the chairman and vice chairman of each committee.

Q Okay.

A And the record will reflect whether or not I had a co-sponsor on any of those bills. I don't recall the exact details.

Q And the bill that you introduced would be recorded in the house journal?

A That is correct.

Q All right.

A The bill and any subsequent amendments will be there.

Q I understand, Mr. Jones—I understand that after the committee had done its work there was a substitute bill reported out of the committee. In other words, the bill that you introduced was amended one time and this was the committee substitute?

A That is correct.

Q And the substitute bill in effect just struck out everything after the wording "Be it enacted," and just went on to specify the 24 Congressional Districts?

A That is correct. The exact procedure on that is this: The committee cannot make a substitution within the committee, but the original bill is the one that is placed

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on the calendar before the House, and at the time it comes up on the calendar, then your committee, usually it is the chairman of the committee, lays out what we call a committee substitute as Amendment No. 1 to the House Bill No.—whatever the number happens to be.

Q And then the House votes on it?

A That is correct. At that time the entire House votes to accept this amendment. And if they vote affirmatively and accept it, then your prior or original bill is not before the House, but your amendment version is before the House, and any subsequent amendments are amendments to the committee's amendment number one. Usually it is number one, if you find an error in the caption, well, you would correct that, of course. I believe in this case it was Committee Amendment No. 1.

Q All right. The committee votes on that amendment, whether to offer that or something else?

A That is correct.

Q Okay. This amendment is a recommendation of the committee to the full House?

A Yes.

Q I see. Now, what I want you to do, Mr. Jones, is just give me your own narrative of what happened in the committee from the time that you introduced the bill that

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you authored and possibly was co-sponsored by vice chairman Clyde Haynes and the time that the House voted on the Committee Amendment No. 1. You can omit the part about the hearings across the State, we have had extensive testimony from Speaker Mutscher and some other witnesses on that subject. Just tell me what the committee did.

A Well, of course, the function of the committee was to consider any bills that were submitted as—in this case Congressional Redistricting bills. I don't recall whether we had specific and entire bills submitted by other members of the House or of the committee, but I would say that our House record will reflect this as to whether or not any were introduced. If they were

introduced as a Congressional Redistricting plan they, I believe, were all referred to my committee. And public hearings were had on every bill that was submitted to my committee. The reason I am vague about the Congressional versus other bills is that we had not only the Congressional but we had our own house members' districts and we had a bill related to the redistricting of the Texas Education Board. But I do know that every bill that came to my committee was posted for a public hearing and was considered as such by the committee prior to any action that we took on coming out with this Committee Amendment No. 1.

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Q What—how many formal meetings did the committee hold, Mr. Jones, to your recollection?

A Well, I don't recall the exact number, I would stand to be corrected on it, but we had—I am going to estimate probably 15 meetings, 12 to 15 meetings total. Now, not all of them were related specifically to Congressional redistricting.

Q How many meetings do you recall that the matter of Congressional redistricting was specifically put on the agenda and was actually considered?

A There was one meeting for every Congressional bill that was submitted. I don't think we considered—in fact we may have considered two at one time. I will estimate again that we had three on Congressional redistricting, and that is strictly an estimate.

Q How long would those meetings have lasted in your recollection?

A Oh, in most cases they were not very long in the sense that if you had a bill before the committee that didn't have a large number of witnesses to testify, well, then, you referred it to a sub-committee so that they might work on any action—take any action they wanted to take with reference to the bill. I would esti-

mate that the longest one was probably about—I would say an hour and a half, maybe two hours. And I don't recall which particular

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meeting it was. I know it was in the Supreme Court—the old Supreme Courtroom in the capital building that we probably had our longest meeting, where presentations were made.

Q And these meetings were taken up mainly with hearing witnesses for or against a particular bill that the committee was considering on that occasion?

A Well, if I recall most of it was of a positive nature on all the bills that were submitted, those people that were submitting them had witnesses there stating their interest for this particular bill. And I don't recall that we had a witness who came and picked a particular bill per se and said, "I object to that bill." Most of it was on a positive approach.

Q Where, when and how often were there debates held by the committee on particular bills?

A Well, debates as such would actually be a discussion of the—I presume your question, would be the merits—

Q Yes, sir.

A Would be the pros and cons of it. Most of that discussion was at the time you had a sub-committee report back to the main committee, and at that time you were recommending that this sub-committee report be accepted by the committee and recommended to the full House.

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Q Well, I am a little bit confused and have been since we started taking these depositions. There were no functional sub-committees, as I understand it, that is, there was not a committee to work on a bill for Congressional districts and another one to work the

House and another to work on the—the other one that you mentioned, some field of education?

A Well, now, there was a sub-committee on each bill by number. In other words, the bill—what was the number of our house bill, do you recall, I don't recall? House Bill 782?

Q Something like that.

A It had a numerical designation, the Congressional Redistricting Bill, and there was a sub-committee appointed to work on that bill.

Q 782, you are right.

A As I recall. Of course, all sub-committees—sub-committee appointments are by the chairman of the committee. And at this moment I couldn't tell you who was on the sub-committee.

Q That was about to be my question.

A Well, I served as chairman of part of my sub-committees too, which is another prerogative of the chair. I am not sure whether I did on this one or not, but I possibly did.

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The record will show who was on the sub-committees.

Q What record, please, sir?

A The—I believe the committee records would have that.

Q Where are those located?

A In Austin.

Q In whose custody?

A Oh, if they are not—we have a committee clerk. If they are not with the committee clerk they would still be with some of my—would be with some of my papers.

Q Would you—

A I would be glad to help you find those or determine where they are and make them available to you.

Q Well, I was going to suggest that you do that,

possibly through the Attorney General's office.

A All right.

Q If you will have your office or the clerk of the committee work with Mr. McDaniel or Mr. Bailey I think that we can perhaps ascertain that information.

MR. FISCHAMN: Sam, is that—

MR. McDANIEL: Sure, yeah. We have got a whole bunch of papers. You can go through them and use them for whatever purpose you want to, both sides.

A It should be with the committee clerk, but if it is not I will help you locate it. We will trace it down.

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Q You don't recall off hand on this particular Bill No. 782 who was on that sub-committee?

A No, I would hesitate to try to name that because I could be in error, we had so many different things happening.

Q Well, how do these sub-committees do their work?

A It was generally on the basis of whatever information we had available to the various sub-committee people and then you just sit down and try—as we were trying in this to reach a numerical ideal of one man, one vote criteria. And to do that, I don't know how you would describe it other than saying that you draw a grease map—an over lay on a map and just draw grease lines in and try to see how to make the puzzle all fit together.

Q I take it that you had census figures available?

A We didn't have initially, but we did before the session ended. And our census figures came in not in the total form. In other words, we started originally, when my committee was first appointed, we had—I don't believe we had any figures. And the first thing we got was the population figures by counties. In other words, X number of people in each county, which gave

you your total of 11,196,730 population for the State. And following that we got in what I call the census tract maps. And there were several hundred of them that showed the various

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census tracts within the various counties. I was trying to recall, we got those county figures I believe in February. And then we got in a large volume of maps with census tracts with a plastic overlay that you put on top of it to show the geographic boundaries in each tract. We had two maps to work with.

Q I take it then, as you say, sit down with the overlay and a grease pencil and started drawing lines and this is where your committee clerk, I think it is Mr. Teague, was sitting there with his adding machine adding up.

A Well, the mechanics of it—actually what we first did, as soon as I got all of these overlays, and that was my first realization that we had several hundred maps to work with, I then got with the Highway Department and asked them if they could help reduce these into workable maps and especially in some areas like Harris County. We had to get one map for Harris County. We couldn't work with—I hesitate to say how many, but a large number of census tracts—census tract maps that were all a part of Harris County because you would have one map here and one over here. I think literally we could have covered this floor putting those maps together, but the Highway Department reduced these down so that we had a map of each county showing the census tracts within

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that county and we had all the tracts on one map, but it was from that that our staff people worked.

Q Do you recall, Mr. Jones, when, as close as possible, the work was done on this Bill 782, that is, actu-

ally sit down and worked with these maps and drew it out and ran the figures out and so on that we have been discussing?

A The final map was, of course, as you know, completed in that special session of the regular session—following the regular session.

Q You are talking about SB 1 now, I am talking about 782. You did report out a bill and the House voted on it before the end of the regular session.

A That was probably—I am going to estimate about the 15th of May. It was toward the end of our session. I pick that date by trying to remember when we finished our public hearings and then I made two trips, I believe, to Washington, D. C., and tried to share with our Congressmen the ideas and information and some—

Q That was before the bill was placed before the entire committee?

A I believe that is correct.

Q How many—do you know how many days or hours or weeks had gone into this before you had it in such shape that you could take it to Washington?

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A Well, I didn't actually take this particular plan to Washington. I tried to take to them some of the ideas that we had gathered up and as far as—actually asked them if they had any recommendations and invited them to meet with us. And I used Mr. Mahon's Appropriations Committee room and advised all of them that we would be there available to listen to any recommendations or hear any comments that they might have or try to answer any questions that they may have had.

Q I want to get into that—

A It was not a—but we did not take up plan—that this was a plan for all House districts in Texas.

Q Well, I want to get into that Washington trip in detail with you, but back to my question. Was—you don't know how much time went into preparing this Bill 782 that was reported out by the committee?

A I wouldn't even estimate on it because I put in so many hours on all of them that I—I have no way of making a fair estimate.

Q I take it that the committee had a formal meeting and voted on this bill?

A That is correct.

Q How long had the bill been available to the entire committee before this meeting where the vote was taken?

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A I am of the opinion that the entire committee did not have a complete plan prior to the time that we met to discuss the amendment.

Q That is prior to the meeting where the vote was taken and the bill was approved by the committee?

A If they did have it I would call it a minimum time that they—well, I don't think there was ever any plan laid out anywhere because any time you laid out a plan you started getting criticism generally or getting response generally of those who were dissatisfied with some part of it. And I don't believe it was laid out. If anything it would have been no more than 48 hours in advance of the committee meeting.

Q All right. Were there some objections voiced in the final stages of the committee on this bill?

A I am sure that there was some but I don't recall any specific points that were singled out as being objectionable.

Q Do you recall any of the objectors?

A I couldn't say positively that it was on this Congressional bill or on this House district that people made specific objections, but I recall, I believe, Bill

Blyth from Houston was one of my committee members, and I am not positive, but I think he was one that objected to the plan, but it was a general objection, I don't remember specifics.

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Q Do you yourself recall, Mr. Jones, working on the Congressional Districting bill in the committee; that is, actually sitting down with the grease pencil or sitting down next to somebody with a grease pencil and giving them your in-put—your thoughts that you used as a member of the legislature and chairman of the committee?

A We didn't meet as a committee as a whole and do that type of a thing. In other words, I didn't sit with the entire 21 members.

Q I am asking about specifically in relation to this bill, whether it was with the entire committee or whether it was with the sub-committee that was working on this bill or just a group of legislators on the committee that happen to be working at that time?

A Well, I am sure I did. I am trying to remember what the situation was. A lot of it was handled by the clerk. I would ask him to draw up our basic map. You know something that would meet the population requirements and then we would try to draw from—well, we worked from that. We would make modifications of it, but I don't recall—

Q Well, what I am getting at, did you actually and specifically make any modifications or work with any of these plans yourself?

A Yes, I worked on them extensively myself.

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Q That is the thing that I am really trying to get at, Mr. Jones. This bill, it would seem to me, would have had to have been the product of one or two men's genius to get it moving and, you know, whatever

changes might have been made as the group of people expanded is one thing; but I am trying to get at, who originated this bill?

A Well, I would—the House bill version was certainly more my origination I think than anyone else. As far as coming up with the—with a base plan—from the base plan you have just got modifications, which—you know, as a matter of whether one county was in this district or another county in another, or whether you tried to keep all of a certain river basin in—do they have some common interest along a river basin line that ought to make them fit in one district or should you—to meet a population requirement, do you have to divide it at some point. So, I was the primary architect, I guess is a good word, of that plan.

Q Well, I used the word genius. You can feel free to adopt it if you care to do so.

A Will the press pick that up?

Q Let me ask you this: What did you do—how did you go about doing this? What factors did you consider in drawing up this basic plan?

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A Population was the number one factor.

Q Was there any other?

A In my own mind, and this is not a computerized process, I think that everybody will recognize, there were—you have got to pick a starting point, you have got to start somewhere and end up somewhere. And your heavy population growth areas, of course, your Dallas-Fort Worth and Harris County areas, and you have got all of the East Texas area, and I would say generally the master—the final plan probably evolved—well, now—I am about to get the two mixed up. Our conference report is separate, which occurred in the special session. This house bill plan was drawn up trying to recognize that we had an increased population

in East Texas. I remember two points that came to my mind, who gets an extra Congressional district, because you have got a new one created, the 24th one authorized by the census figures, due to an increase in population. The areas that were apparent to me as being the big growth areas was the Harris County area, and I use that term generally, meaning all the surrounding counties around Harris County, and the Dallas-Fort Worth area, the big growth areas. So in my own mind I was reconciled that there would be at least one and possibly two new districts created over in that area. And you just start piecing

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these things together trying to draw up an ideal. And we—

Q What other factors did you take into consideration besides this growth pattern that you have just referred to?

A Well, the geographic factors was one. Of course, the area economic interest was another that—without being able to get statistics as to various specific type of industry, in my mind it was a general feeling that the Fort Worth-Dallas area had some economic interest. And they certainly had one area in common interest. And I guess I originated the idea of what—had pride of authorship in the name of a mid-cities Congressional district. I felt with the Fort Worth-Dallas area building an airport jointly that there was certainly some justification where a Congressional district would overlap those two counties. And in my opinion included a lot of the population that would be closely related to that airport development. So that is the most specific economic interest that I can point out as being one of the specifics. The first reaction to a Mid-cities Congressional District I think was kind of surprise, and after we moved along people came to—

or at least we got indication of support from the people in the area up there that they didn't object to that sort of a district. I don't know whether the first was objections or just surprise, but they hadn't thought about Dallas and

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Tarrant Counties sharing a Congressman in a sense that it would be a rather small compact area.

Q What other factors then? You have mentioned this population, and you have mentioned economic interest and I believe geographic compactness, are there any other factors?

A Well, there was one that I referred to in several press releases, a request that we have people participate and make recommendations, I called it cultural. And to me an example of what I had in mind by cultural, and I mention this to people when they ask about it, was such as educational facilities. Not necessarily in the Congressional Districts but in the House districts, I felt it was important that we not split right through a campus and have one half of a campus in somebody's district and the other half in another, that sort of thing.

Q Do you recall specific instances in that regard?

A Specific—instances where we might have been divided?

A Or made an effort not to divide them.

A Well, not on Congressional I don't recall any situation that would have been involved, this general description of cultural interests.

Q Well, in the final shape of the bill this cultural factor was not a factor at all?

A No, as such, I don't feel that it got—you know, a part

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of the final Congressional bill unless you would think

in terms of agricultural and ranching, but to me those could be economic factors instead of cultural because we didn't have any place that we were cutting—as I recall in the Congressional bill that we were cutting either a campus or a city or some closely related group of people because of their particular area. I don't believe we did that.

Q Did you end up, in your opinion, with any districts that combined widely disparity of cultural or ethnic groups?

A Not to my knowledge. I don't think we did.

Q What other factors, if any, Mr. Jones, did you consider?

A Well, we tried to—I don't know how you would describe this, but we tried to present a plan that would not be displeasing to the people involved within the district. I am talking about the people of the district. I am thinking in terms of just the general public. I don't think you should draw up a district at all that they are unhappy with and critical of because somebody is going to have to serve in that district and I think you need some district that they can have what they consider to be fair representation.

Q What other factors, if any?

A As I recall it that pretty well covers that field. The big thing was the numbers game throughout the area.

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Q All right. What do you mean by the numbers game?

A I started to say I had better define the numbers game as being the population balances, trying to distribute these districts on the basis of one man one vote, getting equal population.

Q The original—

A If there was another—I have another thought

here. If there was another factor that entered into any of these districts I would feel that it is related to our interpretation or if you want to narrow it all down basically, our interpretation of the trends or growth. By that I mean, you have got some area with real fast growth and you have got some areas that have a declining type trend.

Q Which districts, if you recall, were affected by these growth patterns?

A This would be real general and I have to acknowledge that I haven't even looked at the plan that we are talking about on Congressional districts, either the final version or the one that we are discussing, the House committee version, but generally I think it was our or my recognition of the West Texas area was, that percentage wise that we had a declining trend. In other words, most counties, as I recall, throughout the western part of the State either declined in population or certainly did not grow at a

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rate that all East Texas and North Texas and the southeast area of the State and even—I believe even down in the Valley is growing.

Q What did you base that on? Just a comparison of the 1960 and the 1970 census figures or did you use some more refined data, whether it was census data or something else?

A Well, in the West Texas area I would say we probably used less refined data in that—well, I will give you an example that I can be more specific in. Looking at the area from north of Midland and Odessa and going as far on an extended line straight east to include the Wichita Falls area, going right north when you get east of Wichita Falls—

Q That would be Representative Burleson's district?

A Well, this is just the part of the State I am talking about. In all of this upper Panhandle. We were about 300,000 population short because I knew in our own House districts that we were going to lose four house districts because of population changes, not necessarily a decline but a per cent of decline as related to the growth of the rest of the State. So I—mentally I knew in this area we had a severe decline by comparison with the other parts of the State. This same figure, I believe, will hold true just generally speaking, in all of West Texas.

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Q How exactly did you take that into account in drafting the bill that you drafted and also the final bill?

A Well, my own feeling was that if we had any high deviations, in other words, districts with more than the exact number for a district that these declining areas should constitute a high deviation figure and not a low sided figure. And this was my thought, and once again it is not a computerized fact, but my thinking was if we had low population in growth areas, they would probably continue to grow and during the next 10 years there would be some degree of equity for the people in that—our sparsely, settled, declining areas, if they were on a high side, would probably decline and those that were on the growth side would grow. And at some point in this ten year span of time the two would cross and you would have some equity of fairness.

Q Any other factors that you can recall?

A That covers it I believe, as near as I can recall.

Q Well—

A I have got five months on it and I know there is a lot that I can't remember.

Q I have before me probably every public utter-

ance that you have made on this subject, Mr. Jones, and there is one thing that leaps off of every page is a determination, if you will, to avoid, in so far as possible, one incumbent

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Congressman running against another in one of these newly created districts. Wasn't this a factor?

A Well, of course, I think that is one of the factors that would enter into it, that did enter into it. And another one, now that you have mentioned specifics, I think—Mr. Mahon is chairman of the appropriations committee. I think any district that you would—in trying to represent the people of Texas, you have to draw up districts that take into consideration those incumbent Congressmen, if you are going to properly represent the public because all of your congressional actions are strongly related to seniority service and if you pair two incumbents you are going to lose your seniority. And it is the political structure of the State that is involved in getting the people represented, and, of course, all the people involved. If I were to summarize the—just the man on the street that came to every committee hearing or every public hearing rather to make a statement, the summary would be, "that we don't want to change our present Congressman's district. We want to keep him." They were all highly in favor of that even to the extent that some of them seemed almost ridiculous, they just didn't think that population ought to enter into it. The strong recommendation was "save our Congressman." This was the plea to me.

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Q Well, how is this done? How do you "save a Congressman"?

A I don't guess there is any way you can do it. His people are the only ones that can save him since they

are the ones that have to cast the votes. But you can even—oh, I think you could draw up a plan to disenfranchise the people and also disenfranchise the person representing those people in their present district if you should draw pie shaped districts in a way and in such a manner that basically the present district would not have a very large voting per cent of the population. You could completely change the balance of power from one end of the district to another end.

Q Well, as I understand it, of course, you have been privileged to serve the people of this area in the Legislature for many years and probably know more about this—well, I know for a fact you will know more about it than I do, but let me see if you disagree with this statement: As I understand it, the district or actually to even narrow it down more, precincts and census tracts, census enumeration districts tend to vote generally the same year after year after year, you will have a balance of, say, 55 per cent conservative versus 45 per cent liberal almost in every election. Would you disagree with that?

A Well, I haven't studied the—well, I will clear up this,

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now, your census tract data wouldn't fit any voting pattern because your precincts don't follow—as I have observed it, your voting precincts don't follow your census tract lines. But I think your statement is accurate in this respect, there is undoubtedly some philosophical pattern, if you want to call it conservative voting pattern, that would predominantly hold over many years, it would be a slow change. You never suddenly change the philosophy of a group of people, I don't think.

Q Then the idea in protecting an incumbent's district is to give him as many of these same precincts

that he had before that voted for him rather than to shift his district where he might, instead of being in a liberal area, find himself running in an area that votes predominantly conservative, is that generally the way this works?

A Well, that would be one way that it could work. Of course, I would say this in reference to this whole pattern of answering questions in press releases, while you are in the process of drawing up districts, had I made any release stating that we were going to pair 10 Congressmen, then suddenly I would have had the wrath of all of the people of the State interfering with an orderly process, and these utterances don't necessarily mean that they were the main criteria because we sincerely tried to draw

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the entire plan on a representative basis of population. But I didn't make any effort to stir up any opposition as we went along. You are generally trying to please people in any political situation.

Q Let me ask you this: As a mechanical matter, say that you had drawn your map on this Bill 782 just strictly on the basis of population, then I take it you would look at it and see whether—just strictly for an example, this would be a relatively comfortable district for Congressman Mahon to seek re-election in or Congressman Burleson or Congressman Patman or whoever it might be that you were examining, and then if you had necessarily changed the voting pattern of that district you would see what adjustments you could make within the concepts of one man one vote?

A I don't recall that we ever narrowed it down to the point where you could feel that it was a concept of philosophy that had the—that made that decision because as I indicated I did a great deal of the work. The one point that I tried—what I felt like we should try

to meet was to draw our lines according to voting precincts in those internal areas of Dallas, Fort Worth, Harris County, but I found out right quick that that was such a complicated process, that trying to correlate voting precinct lines

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with census tract data and then with whatever we were trying to draw in the way of lines, that it proved to be a task that was certainly beyond my means. So, we finally resolved it out that we would try to draw these lines according to the census tract lines and if there was some disparity as far as voting precincts that were involved then the commissioners court would just have to adapt the voting precinct lines to fit our requirements. Now, you may not follow this, but what I am saying is, it would not be real practical to have a Congressional district that split a voting precinct, in my opinion, because when they print a ballot for Voting Precinct No. 26, you would have to have two sets of ballots. One that affected the district that Congressman so and so was running in and another that affected the district that the other Congressman was in. Then you add confusion to the election processes. I had hoped we could eliminate that confusion, but once I looked at precinct lines and tried to correlate the census tracts to them I found out that it was just physically impossible for us to do it.

Q Well, nevertheless you could look at the census tracts and say that, assuming that precincts remained relatively the same, that this was a relatively liberal precinct here and you have got these four or five census tracts, and you

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have got so much population, and we will move it over into this next district in order to make it more comfortable for the incumbent Congressman because they

vote a different pattern historically than he has been used to getting elected from, is that a fair statement?

A Well, I think it is a statement that could be applied, but I don't think that I can remember a situation where it was applied. If there was any opposite application of it, the only situation I think of, I want to be candidly fair with you in trying to present these figures, would be in our own district with Congressman Mahon. Midland County is predominantly a republican county, but the strongest plea that came to me from any area was from Midland, that they be left as a part of Congressman Mahon's district, and he is a democrat. And we left it—we left that as a part of the district. And I would have to say in response to the plea of Midland, the people of Midland. If you were going to try to segregate out which area would be a strong democratic district, we could have dropped off Midland County and Mr. Mahon's district would have been a much stronger democratic district. But there were two things that would have made it practical if you had wanted to drop it. It is at the extreme end of the district. You could have very easily, I think, had

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justification for saying, "Let's just drop it off because we need to maintain some of the old district that has existed for many, many years." Though the people down there were really concerned and interested in having it maintained within his district.

Q Well, you had to sacrifice a considerable amount of compactness and community of interest and economic compactness in order to do that, didn't you?

A Not necessarily. Well, if you have got—their population was some 60,000, if you are thinking in terms of sacrificing geographic area compactness, it would have taken a large number of counties anywhere in this part of the country to get 60,000 popu-

lation. I would say a minimum of, and I am doing all of this from memory, I think you would have had to add at least five or six more counties to the district to compensate for that 65,000 population of Midland County.

Q Well, the net effect of it, in order to keep that entire county—

A Keep the entire county. Keep the entire county you have a more compact district, that is correct.

Q You would agree that Floyd County shares a certain amount of economic ties to the 19th District, Lubbock County and so on?

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A Oh, yes.

Q All right. And there is a certain amount of community of interest?

A Yes.

Q Cultural ties between Floyd County and Lubbock County?

A That is correct.

Q And you would say the same or probably more true of Crosby County, wouldn't you?

A All of these counties surrounding this area have their economic ties, common interest in agriculture.

Q And yet in order to accommodate Midland County it was necessary that you exclude Floyd County, Crosby County and Garza County, which is another one, from the 19th district?

A Well, it was not necessarily to accommodate them, but Midland was a part of the prior district, and so were some of these other counties that you mentioned, and it is just a final matter of how you draw lines to balance out figures. And these other counties—

Q Well—

A —of course, add on to other districts to the east. Well, if you have—if you can visualize the State of

Texas as a jigsaw puzzle, and if we were to take Midland out of the puzzle in its present form of this district,

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then you have got to push this district some other direction and when you push this district you have got to re-shape the next district. And the trade secret of drawing a map is this: If you start at Midland, presumably we move north and east in re-shaping district, at some point you have got to make a complete circle and come back or you are going to be out—your wheel won't balance.

Q Well, the—

A It is one of those decision things.

Q The point of the thing is, the decision in this instant, the factors to be considered, protection of the incumbency, predominated over community of interest or economic ties?

A It wasn't protection of the incumbency, it was in response to those—to the strong desire of those people in Midland County to stay in that Congressional district.

Q All right.

A It was in response to their pleas and there was no response from an incumbent that "I want this county or don't want it." There was no expression.

Q Now, if I remember correctly you say that you made two trips to Washington?

A That is correct.

Q Who paid for these trips?

A These trips were at State expense.

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Q How did you go?

A There was one—the first trip that was made we used the Governor's plane and I believe I went in the day before on commercial airline or maybe I went in

earlier that same day on commercial airline, but the Governor's plane was used on one trip where a part of my committee and a part of the Senate committee both went up together.

Q Do you recall who was on that trip, Mr. Jones.

Q Oh, I don't—I can check that information out for you and find out who was on it, but I don't recall.

Q Does the—whoever keeps the Governor's plane—

A Clyde Haynes.

Q —keep a log of the passengers or anything?

A You should have to ask him. I don't know whether he does or not.

Q You do recall that Mr. Haynes went along?

A Yes, Clyde Haynes.

Q Do you recall anyone else?

A I am trying to remember. I asked Jim Nugent to go. He was our rules chairman. You have—once you get a bill out of our own committee it has got to go through the rules committee to get it before the House. And plus the fact that I am not an attorney. I invited him to go along with me, but I think he—I believe, I stand to be cor-

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rected on this, that he went on that trip and I am not sure whether it was commercial or whether it was with the Governor's plane. I think he was on the Governor's plane, but I am not sure.

Q What again briefly was the purpose of this trip, Mr. Jones?

A It was generally a—my version of it was sharing the information that we had gathered at our public hearings, and this came after the public hearing. That was the way I scheduled it. And then certainly I was receptive to any recommendations or thoughts that the Congressmen had on what we should consider before we finally came up with our final district plans for the

Congressional districts.

Q And I take it that you did in fact meet with one or more Congressmen while you were in Washington?

A Yes, we met with quite a number of them. I don't know whether I have a list of who all—who we met with or not. I remember several of them that I met with. Of course, Mr. Mahon. We were using his facilities. It seems that Mr. Poage—I am not sure but I believe that Mr. Poage was out of town. I am not positive on that. I met briefly with Mr. Teague. I can tell you those that I think that I met with. I met with Mr. Purcell. I met with Bill Archer from Harris County. And I met with Jim Wright and Omar Burleson and several others, but those

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are some that I can remember personally sitting down to visit with and talk to and ask, "if you have any—are there any areas here that you want to tell me about?" And generally throughout this whole process I had released what I call thought provoking maps or some possibilities of a district or a series of districts, but at no point had I ever released an entire Texas plan or at least I don't think I had. And these "thought provokers" were exactly what I named them, to get people to thinking about an area like the one I had put in the map and then "if you have any points that you think this is not satisfactory, the people think are not satisfactory, well, express your opinion on it."

Q Did you receive some suggestions?

A From the Congressmen?

Q Yes.

A I recall only one specific that I requested, one specific map. Most of them made their recommendations in generalities. You know, "This is my old home district and I would like to preserve it as nearly as possible, but I know that you have got problems." And

as far as I recall there wasn't any violent expressions. In other words, nobody said, "Just don't give me that area because it won't fit." It was all a positive approach that they had

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a preference and that "we would like to maintain our basic district the same as we have it now. If you have to add something on this area down here has the same economic interest," and that sort of discussion. And we actually drew for them or tried to draw some of these grease pencil overlays that I mentioned to you, and get several different ideas from them as to what—

Q Are any of them still in existence?

A I doubt seriously. Your grease deal is a clear plastic deal and when you change it you just erase lines. So I sure—if there are any in existence it will be an accidental thing. If there is still something in the office, I don't know. I will check and see.

Q If you would do that I would be much obliged—

A If there are I would be glad to furnish them to you.

Q And did you incorporate any of these suggested changes into the bill?

A Well, at this particular point they wouldn't have been changes, it was just an assimilation of data. And probably the nearest to anything that I would say was incorporated would have been, and I am doing this once again from memory, in Harris County, the thoughts or recommendations that Bill Archer had, probably come nearer to fitting the districts as they are drawn down there in that particular

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area, or as nearly as any in the State.

Q Is that a coincidence or was it by design?

A Well, it fit in pretty well with the rest of the pattern of that area and seemed to be one of the satis-

factory things. There is not any, in the sense of predesign, that he had any priorities over other people. I don't recognize it as such, but it is one. And the reason it stands out to me is the fact—the reason I remember it, Bill Archer served in the House of our Legislature. And, of course, he switched from the Democratic Party to the Republican Party. And I guess if there was any subconscious thinking, I didn't want to do anything that would disenfranchise him because of party politics. I was especially interested in what his preferences would be in that area.

Q Well, again—

A Or his recommendations, more than preference.

Q You are putting this in terms of party labels, but wouldn't it be more accurate to speak in terms of liberal versus conservative, irrespective of what label—party label a man adheres to. Because as you—I think you agreed a while ago these districts tend to vote the same way over a long period of time, change very slowly. So whether a man runs as a democrat or a republican, if his conservative

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philosophy fits this preponderance of the people in his district he is going to be elected.

A Well, of course, that is a matter of opinion, I think whether it is philosophy or what you use. I wasn't looking at the philosophical aspects of it. Probably in terms—I don't know Harris County, so I don't know whether—I am sure that he comes from a conservative district because I know him well enough to know that he is—has a conservative voting record. He always did in the House. So, he would nearly have to come from a conservative district or they wouldn't elect him. So it goes back to philosophy, but it is indirectly back to—

Q Was any effort made to prevent fleshing out of

urban—or rural districts with urban population?

A I didn't understand the question.

Q Was there any effort to avoid fleshing out rural district with urban population? In other words, where you had a rural district that met all the other criteria except population; that is, it was culturally compatable, it was contiguous as possible, it was geographical compact, and it was agreeable to the incumbent, but yet you just turned up with too many bodies short; was there any—did you go into the urban district in order to flesh it out, give it enough bodies to stand up?

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A Well, the one situation that I can recall that I think would fit your question was the opposite. And once again we go back to that mid-cities district, Fort Worth-Dallas, had we taken the so-called Abilene district, Congressional district, and used part of Tarrant County to build up the necessary population we would have absorbed, I think, so much population there that you couldn't have created what I call that mid-cities district. So really if there was anything done it was an opposite effect of that. And we stayed away from building that district there. Now, your other districts that I recall off hand that involved a large population area is that district, and I don't know the number, but it the one that Congressman Teague represents, which included a part of Tarrant County and a part of Dallas County.

Q And in fact stretches on down to the East Central Texas area?

A On down into Central Texas or East Central, you are right.

Q And—

A This one again, the reason I relate it, it is related to this other approach. If you took the Abilene district into Tarrant County, you either modify that mid-

cities district or you modify the district, the part that was in with Mr. Teague. And Teague was already—his Congressional

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district covered those same areas generally in the prior Congressional plan and also the one that we passed. So—

Q Let me ask you some specific questions about this particular one that you have brought up. That was the 6th district.

A I don't recall which one it is.

Q Well, I am looking at the map.

A Are you?

Q If you will take my word for it. You say that first of all that this is roughly the way the district laid after the last redistricting?

A Yes.

Q Was there any great expression of opinion by any of the people in the urban areas of that district, particularly in the Dallas and Fort Worth areas, either wanting to stay in or wanting to get out?

A They were real strong that they wanted to keep him serving a part of their county by the people who were contacting me. They indicated very strongly that they wanted to keep Mr. Teague in Tarrant and Dallas Counties. Well, Tarrant County people, of course, weren't worried about Dallas, but they said, "Don't take him out of Tarrant County. We love the way he is representing us." And the same thing in Dallas, the same presentation of ideas were brought forth. And in his old district, if you have

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it before you, you would see that it stretched completely off down to, I believe it went almost down to the coast. It was a tier of counties about one county wide. It was really a long drawn out district. And it

was jokingly said that you could drive down there with both car doors open and reach from boundary to boundary in this district, but, of course, it is not actually true. But we—in trying to reach compactness we stayed with that northern end and it fit the other patterns. Of course, once again you pull out of there and you have got to re-shape the whole thing.

Q You would agree that it is still a pretty long narrow district although you did manage to shorten it up some?

A It is much more compact now than it was. And I don't even know what it looks like right now to be honest with you.

Q Are you aware that it stretches as far south as Brazos County?

A Is that College Station?

Q Yes. College Station.

A I knew it went from College Station to Dallas, yes.

Q Would you agree that there is a certain disparity of economic and community interest between College Station and Dallas?

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A Not necessarily, there is not any gross disparity, I am sure there is some difference in that Dallas and Fort Worth are financial centers. This is my evaluation of what Dallas and Fort Worth are. Plus the fact that they are manufacturing, but they are also greatly involved with education down there where they have got so much high population. Of course, A & M is one of the historic centers of education. So, there are some differences, but as to how wide that disparity is, I think that is just a matter of each man maybe measuring from different points. If I were talking about farming I would say there is a wide disparity in the farming element. And the reason I

refer to that I am a farmer. The farming element would be quite different in Dallas County from Brazos County I suspect.

Q Let me shift your interest just a minute to the South Texas and the Southwest Texas areas of the State. Particularly I have reference to the fact that Bexar County is comprised of three Congressional districts, the 20th and 21st and 23rd. Are you aware of how that—basically the outline of those districts?

A Basically, if I remember, we have got what we call the core district, one district within the center of the county, and then the other districts come in toward that

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center district.

Q That center district or core district is the one represented by Representative Gonzales?

A Yes.

Q And I think you would probably agree that it has extremely high ethnic population of Latin American?

A I don't know what the population—how it figures out along those lines but in our San Antonio meeting I recall that the most urgent plea was that "we want to stay in Henry Gonzales' district," the present district. I think this is pretty close to his previous district. It is not exact. It was his previous district with some minor changes to meet the population requirements.

Q Now, the 21st district is Representative Kazen which encompasses Laredo and—on the south—no, I am sorry, the 21st is Representative Fisher, I believe.

A Clark Fisher.

Q Yes.

A If it is the one that runs up toward San Angelo.

Q Right.

A It would be.

Q Right. And it runs on southeast down into the western and northern part of Bexar County, does it not, your recollection?

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A As I recall it does.

Q Which would encompass the, if you are familiar with San Antonio, Alamo Heights area and some of the more affluent suburbs on the northwestern part of Bexar County, would it not?

A Well I am not familiar with Bexar County, but if that is where they are it would.

Q Okay. Would you say that there is a community of interest in that district?

A Community of interest with the remainder of his district?

Q Yes, sir.

A Is that what you are talking about?

Q Yes, sir.

A As I recall the thinking that I had with reference to that area is the fact that Bexar County or San Antonio is predominantly a military—militarily oriented economy because the—because of the historic fact that we have such large military bases and facilities there. And one of the reasons for building his population, if you want to use the term "building," out of Bexar County is the fact that he has a predominant role on one of the military committees in Congress. And that this was—I guess this was in response to an economic interest that we were aware of, that there would be compatibility to that area—to

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the area he had been serving before.

Q Yet none of the large military installations in Bexar County are within his district, are they?

A I don't recall whether they are or not, but the

main emphasis, as I recall it, was his position on the military committee was certainly essential to all of San Antonio, whether it was a base or just the entire town. Of course, the basic factor in all of this was to make all of these districts come up to the population tolerance which was needed. And in some of the sparsely settled areas the only place you are going to get people is by attaching them to some heavily populated area.

Q That is what I am trying to get at. Fleshing out a rural district with urban population?

A This is one of those situations.

Q And the same would be true down in the 23rd, which I believe that is Representative Kazen's district, which encompasses Laredo and the southern and eastern parts of Bexar County, and points north and goes over as far east as Lavaca County?

A I think his district, the strong emphasis on that part of the county, and once again I re-emphasize I am doing it from memory, gets back to the fact that he had a large segment of Latin American or Mexican population throughout

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his district and the same was true up in Bexar County, his part would encompass quite a number of the same people in those areas, same ethnic lines.

Q Did you actually have such information available or was this just a matter of, you know, in doing these things, a matter of applying general knowledge or did you have specific data?

A It is very general because as I recall we didn't have anything at all related to where the ethnic groups concentrate in any area. It was just a matter of, you know, some general statement that somebody or myself would know that there were a certain number of ethnic people in an area within a county, And it was

certainly, I am quite sure, not very accurate.

Q You didn't miss the mark by far in the 18th district, referred to as the "Barbara Jordan District."

A Well, I don't know how the—where the people live but I do understand that it is predominantly a Negro district. And certainly I feel like this when you have a heavy predominance of people there, if there are enough to make up a district—as I recall the presentation of the Houston—their presentation from the Negro people was generally this, and this is a summary, not a specific—maybe a quote from one of them, "I don't care how you

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make our district, just don't cut us into little pieces where we can't elect anybody."

Q By the same token, the net effect of that was to remove some very heavily black precincts from other districts, such as Representative Archer, who you have already indicated is a predominantly conservative member of Congress, and—I am trying to think who some of the other people are from down there. Casey is one of them.

A Bob Casey.

Q Another example—

A Eckhardt

Q Eckhardt, as I understand, has a rather liberal voting record, so it wouldn't make much difference to him, but it would have the net effect of removing a lot of white voters from Representative Casey and Representative Archer's district, would it not?

A Well, of course, the primary interest throughout this—my primary interest was for those people to be represented and it was not predesigned to remove them from anybody's district to add them to a district. The configuration now may show that that was the net result, but that wasn't the primary objective in trying

to remove or relocate them. Trying to meet the population requirements and trying to blend in with what those people wanted and

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what their interest was. And certainly there are enough of them there to form a Congressional district. I have no objection to them all being together. I think you would disenfranchise them if you just made a pie shape—bring all—what is down there? Five districts? If you would split it five ways. See if you would split it five ways you would only have about 92,000 people in each Congressional district and they wouldn't be in a position to—in my opinion, feel like that they could elect their own Congressman and be fully represented by someone of their choice. They cast a vote but the other 370,000 people in the district would dominate it.

Q That is possible.

A I mean that was another possibility. Once again it just boils down to the point that you have got to draw a line somewhere and begin working from that.

Q Now, let's shift our attention back to the north and I want to ask you about—a little bit about this mid-cities district and its relationship to the 5th. Do you recall ever speaking to Congressman Cabell while you were in Washington?

A He was at a breakfast that we—or a luncheon. I believe it was a luncheon that we attended. He was there but I don't recall drawing any lines or his drawing any lines,

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you know, with reference to how to draw that district or whether I drew any for him, I don't recall.

Q Do you recall him expressing any views about being satisfied or dissatisfied with his district as it now stood?

A If I—the only thing that I recall about any of them was their general position. You know, "I would like to maintain the same district that I have if at all possible." So it would be a general statement of satisfaction with his prior district, whatever it was. I don't even know how much it varies from what we have presently got.

Q His district under the way it is built, if it had been kept the same, would have been substantially over populated, would it not?

A Probably would have. I don't recall that specific data.

Q Can you tell me why 10 predominantly black precincts were shifted out of his district and into the 24th?

A The 24th is a new one?

Q Mid-cities. Yes, Sir.

A I don't recall any specific reason.

Q Were you aware of this fact prior to my asking you?

A Not until—

Q All right.

A Not until you asked me.

Q Had you ever had any discussion with Representative Holmes

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about that fact?

A If there was any discussion on it I don't recall it.

Q Do you recall him—

A Now, he may have made—he may have mentioned it, but as far as any discussion it was not of such paramount significance that I recall it. I don't recall him ever mentioning it. But this doesn't say that he didn't do it because I don't have that total recall. I wish I did.

Q Let me say this, Mr. Jones, I have got these

maps in front of me and I don't want you to feel like I am trying to take advantage of you, if you want to look at any of these maps or anything else I have got in the file feel free to do so, if it will help your recollection.

A No, it is—if it were a real significant point I think it would probably stand out.

Q Let me direct your attention now to far West Texas. You have already indicated to me that where you felt based on a comparison of the '60 to '70 census and what other general available information you had, a district with a growth area you made a deliberate effort to under populate it in order that sometime within the next 10 years it would catch up with those that were decreasing.

A This was general and I don't know that it applies in every case. But that was what I—as I recall it, what I hoped

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would be achieved.

Q Well, let me ask you this: Did you deem the 16th district, that is the one the chief city being El Paso, to be a growth area or one that was going to lose population?

A It was, as I recall it—this is—a vast part of that is in that almost desert land, declining area. You have got a large number of rural counties that are declining, and then it extends down to Odessa. And Odessa is a growth—was one of the growth areas, I believe.

Q And El Paso is a growth area, El Paso County itself?

A It has some growth but I don't think it is great big percentage wise growth, and I may stand to be correct on that.

Q Well, the point of the fact is that El Paso County itself has 75 per cent of the population of that dis-

trict, and when you add in the Odessa—that part of Ector County where Odessa is situated, then it comes up to something like 85 per cent of the population of that district. Both of which you have indicated were moderate growth areas.

A Yes.

Q Now, my question is this: If your intention was to account for these things, why is it that the 16th district is 11,084 people over populated from the numerical ideal?

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I would like to preface that by saying that this was the allegation that was made in the complaint filed by my clients in this suit and it has been admitted in the answer of the State, and it is taken as a given fact.

A Well, I am not questioning that, I am sure you are right on it. At some point in there and I am trying to recall why that—there was some thinking about a change in El Paso. You know, that this growth factor was not—had some inconsistency as a guideline there. I don't recall whether it was military changes, but somewhere in my own thinking I didn't—or I don't at this point recognize why we made that difference other than my general thinking is that all of West Texas is a declining area and it may have been overly generalized there.

Q When you refer to West Texas, are you also encompassing the Panhandle and the 19th district as well?

A Yes.

Q As being declining?

A To me West Texas is from Abilene west—Wichita Falls and Abilene west.

Q So your testimony is that you felt that the 13th district, which is the Panhandle, was a declining area?

A Percentage wise, I feel it is declining in compar-

ison with the rest of the State.

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Q Well, did you consciously and definitely take into accounting in establishing the 13th district?

A I don't recall at any time that I could pick out a certain district and say that we ever determined that X district had so much growth trend one way or the other and, therefore, we had to go over or under by any certain number. It was sort of just a general guideline that was in the back of our minds.

Q All right. Then, it was not actually done on a systematic basis, applying the size of topography to the population figures?

A Right. I think that is accurate, it was not systematical. In fact we didn't systematically, I don't believe, evaluate each one of these districts with that thought in mind, or I can say I didn't, I don't know what the rest of our committee of conferees used, but I didn't systematically do that.

Q Okay. Now, you have no knowledge of anyone else having done so?

A Not on the House side. If there was any more extensive consideration of it it would have been on the Senate side.

MR. FISCHMAN: May I suggest that we take about a minute or two break?

MR. McDANIEL: Okay.

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(Recess)

Q Mr. Jones, you, in passing in answer to a question a while ago, made mention of a fact that I want to explore with you a little bit more, and that is, you used the word "population tolerance." Tell me what you mean by that, sir?

A I don't recall where I used it. Do you recall how I used it?

Q Well, I gathered, I don't want to go back through the reporter's notes, but you were talking about acceptable deviations from mathematically equal figures.

A Well, I think the—I don't know how it was used, but my general thinking of how it was used would be in a context that we know that there is not any way that you can get the exact, absolute number of people to come out—you can come out pretty close, it might be possible, but I don't think it would be practical.

Q Let's get—

A There would be some deviation.

Q I take it because you have to write these bills by census tracts—

A Right.

Q —in the populous counties, and census enumeration district are entire counties?

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A Right.

Q In the rural district and there is no way you can get it to come out to 466,530 every time?

A That is right. You would just have to go in and count everybody personally and say "I know that there is this number of people living in this corner," and then you would end up—to get it perfect, I think you would have to split county lines extensively.

Q Was this something that you tried to avoid doing?

A Splitting of county lines?

Q Yes.

A Yes. And once again this relates back to your system of conducting elections because basically elections are held within counties and precincts come under that unit, you don't have an overlap between the two.

Q What deviation was acceptable in your view?

A What—

Q That is, without doing violence to the principle of one man one vote?

A Oh, of course, my opinion was that we should stay as close as possible to the exact number, but in my own mind I—and this is not anything other than my own opinion, I felt that variations or deviations of as much as five per cent, which if you have five high and five low would

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give you a total difference in the district of 10 per cent, which would not be an unreal figure in seeing—in saying that you could properly represent districts.

Q You mean to tell me that it is not physically possible to draw a bill that comes within five per cent either way or—

A I—

Q I am sorry. Strike that question. I didn't ask it right. What I am saying is this, if you came up with a bill that deviated five per cent up or five per cent down, or a total of 10 per cent between the highest and the lowest, that that would be acceptable, even though you could draw one that was tighter than that?

A Now, this was my opinion. Yes, I think it would be—should be acceptable. And, of course, if you can draw it closer I think you should.

Q And I take it that that was your view during the legislative session?

A Yes. To draw it as close as possible.

Q But five per cent either way was okay?

A That was my opinion that it would be. Of course, I have no idea whether we have got a Supreme Court opinion on Congressional districts or not, on that deviation factor, but I think—it seems that somewhere there was either

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a statement made or there was an opinion cited where there was three or four per cent or five per cent deviation or something like that.

Q Okay. Well, let me ask you this, it has been admitted in this lawsuit from the pleadings that the maximum difference between the highest and lowest was something like 4.1 per cent. And is it now your testimony today that the bill could not have been drawn—it was impossible to draw it any tighter?

A The question I want to ask is this: The figure that you quoted, the 4.1, is the total spread?

Q Yes, sir.

A In other words, there is X number above and X number below and when you add them together you come up with 4.1 variation?

Q I think I can be specific about it by referring to the pleadings. The 15th district is 1.7 low and it is either the Amarillo or the Lubbock district; the 13th, the Amarillo district, is 11,326 over, which is 2.4 per cent, and the total spread between the 13th and the 15th is 4.1 per cent.

A That is what I wanted to be sure of, talking about a total spread or deviation. I think this, that if you draw up any comprehensive total state-wide plan that, in my

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opinion, this is as near as you can draw it to get to the ideal figure. Now, by that I mean, you might modify these particular districts that you have enumerated here to get them real close to tolerance. In other words, make the two of them almost exactly the same, but I feel that at some point in the State you are going to come up with another district that has some variation very close to that, not necessarily exact, but very close to it.

Q Would it surprise you to learn, Mr. Jones, that

in this lawsuit the Plaintiffs submitted a plan that was virtually identical to SB-1 in the geographic composition, the district cultural composition, economic composition, preservation of the incumbent, yet the deviation was in any instance no greater than .1 of one per cent?

A Yes, it would. It would surprise me.

Q Let me ask you this, this may be answering the same question, or me asking it another way: Why would it surprise you?

A Well, of course, based on the number of hours we put into this one I thought we had evolved a plan that when you took all the factors into consideration we were just about as close as you could come with it. Of course, once again I suspect you could take any plan and possibly make some modifications in it and get some improvements on it after—

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if you had the time to spend on it without any—without the pressure of having to meet a deadline. But it does surprise me.

Q Well, you would think that an improvement of making a plan 21 times better in the maximum instance would be a significant improvement, wouldn't you?

A Well, I think this one—I probably don't understand the question because I don't know what your definition of improvement or better would be. So my definition and yours might differ. I am not trying to be argumentative. I don't visualize your plan.

Q My question called for an argumentative answer. So I will ask another one and we can move on. Tell me if I am summing up correctly what you are saying in regard to these matters we have been discussing for the last minute or two. The plan you all did was the best that you could, taking into account

all of the factors other than just the raw population figures?

A That is my opinion. We had just reached the point where if we solved one problem that another would—that solution created another problem, because after you get the final plea worked up, you change one or two counties and somebody is not going to be satisfied with that change. You finally just reach the point that this looks like the

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very best that you can do and put it to the vote test.

Q That is the final test, isn't it?

A Right.

Q What will pass?

A Right.

Q You can draw the best plan in the world but if the Legislature won't pass it then it is not worth a plug nickel?

A That is right. This is the point the computers can't see. In statistically computing data like this is the fact that you—in our case, we had to get the vote of the membership of the Legislature. There were 181 votes and the majority of them had to be satisfied or all your work was to no avail.

Q This was the best bill that had a chance of passing?

A This was our opinion on it, correct.

Q Although you will concede, having been advised by me, that a better one could have been done, better numerically, I say that term without prejudice.

A You might draw one statistically that would come nearer to the exact numbers, but I don't know whether it would improve it any as far as representing the people of the entire State and certainly I doubt that it would improve the possibilities of getting the necessary votes to pass

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it in both houses. So I think we are both agreeing on the same point.

Q Mr. Jones, you were on the conference committee, were you not?

A That is correct.

Q Let me ask you this: All the previous witnesses have testified that it was generally understood from the very outset of the legislative session that the Congressional redistricting bill would be written in the conference committee?

A This was the—of course, this is the general understanding on any bills where you have this much difference of opinion. You just finally have to resolve it down to a rather small group and hope they come up with the best compromise solution. And in this area I think it was understood from the very beginning that certainly the House was not going to draw the whole Congressional plan and neither would the Senate draw it, because just the act that I don't think either body could draw one that both sides would agree was the very best.

Q Here again that is the name of the game?

A That is right.

Q You have to—the Senate might view the various factors other than raw numbers differently than the members of the

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House?

A That is correct.

Q And vice versa?

A And you might start at some different point in putting these packages of district together and certainly if you start at two different points you are going to have two different answers even though the basic idea might be pretty close to the same.

Q I understand further, pursuant to this general understanding that the House was going to draw the redistricting bill for the House and the Senate was going to draw the redistricting bill for the Senate?

A This was my feeling on it. Of course, we are talking about different bills now. But on the House redistrict plan my feeling was that the House membership knew more about their district than did the Senate membership.

Q And vice versa.

A And the same was true for the Senate people. And personally I felt that this was the way it should be drawn because after all the people elect the House members and the people elect the Senate members and they are not all identical in the districts that they are in.

Q Fortunately that is not my lawsuit.

A Okay.

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Q We can worry—

A We can get off of that theory then.

Q We can worry about something else for a minute. Let me ask you this: You, of course, as chairman of the House committee and you have already testified that you had a substantial hand in passing the House bill, and then I take it you were also on the conference committee?

A That is correct.

Q Tell me what went on in the conference committee?

A Well, I guess each of us had our—and I am speaking of the House and the Senate, members of this conference committee, had our basic ideas that we were interested in. Now, we had passed the Congressional bill out of the House. So this certainly indicated what our House membership wanted. And then

when we brought the Senate conferees in and they—each person would have some area that they thought should be different or some plan that they felt should be better and was interested in presenting it. And once again we went into this rather long drawn out grease map making process with the conferees there and we drew maps.

Q How far apart was the version passed by the House and by the Senate during the regular session?

A I don't know that I could even answer that question. I

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don't know. I don't recall what big difference we had.

Q How long—how much effort did it take to report out a bill from the conference committee?

A Well, we were working during the regular session pretty strenuously, and I recall that on the night before the regular session ended that I spent the entire night, from 7:30 P. M. until 7:10 the next morning—7:15 the next morning in the conference room. And the conferees were all present at least until 1:30 or 2:00 o'clock in the morning. And at that particular point it had narrowed down—well, several of the conferees were just physically exhausted and thought we should shut down, but we were trying to complete it before the session ended. So I asked Senator Word if he had any objections to our going ahead and trying to work up a plan and then get everybody to take another look at it the next day, which was the last day of the session. He had none and he and I continued to work longer than that. I don't recall the time element. He left at some time before I did. And finally he said, "Now, you know generally what we have been working on. Are you physically able to stay and see that the staff draws it like we are talking about?" And at that point I stayed the rest of the night. And I am not

sure, I think at least one and possibly two of my conferees

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stayed with me the rest of that night. And we came up with what we thought was a plan that everybody had been discussing, even though everybody was not there at the final time. We, of course, spent nearly all of that day in getting the—in letting the legislative counsel staff draft the verbiage that goes with the description on this kind of a map. And as I recall it they didn't complete it until pretty late in the evening. And we got the conference report ready, I did at least on my side. And you will remember this, there are two conference reports. The Senate makes their conference report and we make our conference report. And you sign these jointly if everybody is in agreement. And I got my conference report—

Q They are identical?

A They are identical reports. My house conferees were agreeable to this version, at that point I think at least four of them were. And then well into the night, the that that our—whatever that date was that our regular session ended. We were trying to round up the Senate conferees to get them to review this and see if this was everything that we had agreed upon the preious night. And there were a part of their conferees and I don't recall which ones that were not there. But I do know that Senator Word could not locate all of his conferees

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that evening to get them to officially sign the agreement and he didn't indicate that it was totally acceptable to him or not. He wanted a majority of them together and let them take a look at it. So finally the midnight hour came and that was the end of the session. So we were pretty close at that point. And then,

of course, I believe it was the very next day that the Governor called a special session for us to continue this work. Of course, there were some formalities, being a special session, that you have got to introduce your bills and you have got to get them referred to your conferees. And for all practical purposes our conferees just went back to work. And if I recall it correctly we were in session about, I believe, three days. I am not sure whether that special session was three or five days. But it was actually about three days of work on the bill in that special session. During the time—

Q Let me ask you this: Was it a harmonious or an acrimonious conference committee?

A Well, this is one of those questions that can't be answered yes or no because what would be considered to be harmonious by me or any other member of the Legislature might appear to be totally disharmonious to an outsider that is not accustomed to the functions of a conference committee. I

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will say this, we did not have 100 per cent agreement in our conference.

Q Well, let me—that is not real important.

A The major differences are always present.

Q I know that it is not your prerogative, Mr. Jones, but were you satisfied with the composition of the Senate conference committee?

A Was I satisfied?

Q Yes, sir.

A Oh, I had no objection to them. My own feeling, I would take any five Senators you wanted to put on the conference committee and work with them. I hope they would feel the same about the House.

Q Well, did you feel like any of them had somewhat of a vested interest in the final outcome of the

bill?

A Probably no more than some of our House members did. I know that you are always going to have somebody that has a feeling or a strong interest about one particular area. And the same thing is going to be true about the Senate.

Q Well, strong interest is one thing, but a vested interest is something else. Did you not take note of the fact that there seemed to be, as Speaker Mutscher put it, lack of geographic balance in the Senate conference committee, plus the fact that I believe four out of the five have

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been speculated about publicly as being aspirants to Congressional offices?

A Well, until you mentioned it I hadn't even given it a thought as to where they came from. Even at the time they they were appointed I didn't—it may have been that I was too tired to evaluate people, but I wasn't trying to evaluate the people, I was just trying to get the bill worked out.

Q Did Speaker Mutscher or Lt. Governor Barnes address the conference committee, either formally or informally?

A We—I think on the last day we had both of them there because we were at the point of trying to decide how far we should or should not go on compromise. I know the—I can speak for my personal contact with the Speaker on it, what came out as the final conference report, and I gave as my opinion of what we should compromise, whatever our differences were then, I told him what my recommendation would be and asked if he had any objection to it. This is a courtesy that you show to your chief officer. And I think, this may not be the exact wording of it, but I think this is pretty close, Speaker Mutscher said, "Well, that

is why you are chairman and why you have been on the conference committee. It is up to you to decide, you know, this sort of differences, and whatever you decide is certainly all right—if that is

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what the rest think."

Q Is it your testimony that Speaker Mutscher at no time during the regular session or the special session made any suggestions as to the form of the bill?

A That is right. You are talking about did he say there are certain things you can or cannot do?

Q Yes, sir.

A I don't recall it if he did. It is outside my recall and I think I would remember it.

Q Do you recall Lt. Governor Barnes so doing?

A Well, of course, the Lt. Governor—the discussion that he was involved in, as I can recall it, at conference time, he and Clyde Haynes were involved in some discussion. It was relative to the Trinity—oh, Clyde kept referring to the Trinity River Historic—something that he thought a bunch of counties contiguous to the Trinity River ought to be in the same district. And we were—

Q Is that the one he had discussed in the press as being interested in as being a candidate for?

A Yes, this is an area that he—and once again I guess if there was any interest, he and Charlie Wilson were interested in the same area. They were both very strongly interested but in opposite positions on it at that point. There was a lot of discussion that last night. I suspect

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it got a lot of play because it was the resolve that finally resolved the differences. That was one that we were still hung up on. And we finally, as I recall it, we accepted whatever the Senate recommendations were

on that particular district and changed it.

Q What in-put did the Lt. Governor have in dissolving this particular situation?

A Well, his—he was present there and I don't know how to describe it except to say that any time you have a conference committee functioning I think when your Speaker and Lt. Governor come on the scene they will certainly be considered and they will have some commentary. And I think generally we were talking in that line of terms, that we needed to settle this thing because we were going to prolong the special session and it was costing X number of dollars. He had some commentary. He and Clyde Haynes were very much at odds about how much difference it would make if you put in one or two counties and you took out one or two counties along this—maybe it was the Sabine River. It was some river. I am not familiar with their rivers in East Texas. But it was some river basin that for some reason the people over in that area thought it inherently urgent that they be kept together. And they had some comments, which I am sure were true. I think

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one statement was made that if you took every river basin and tried to keep everything that was related to it that you would extend one district all over Texas because of the tributaries that feed in. But I would say his in-put, and this is my evaluation of it was—it was important but I don't think it was of paramount importance. I think we would have had the same differences and probably would have reached the same solution had we not had either of the two there.

Q Well, what you are saying, if I can understand correctly the shape of this district, was a matter of contention? If it had been shaped one way it would have favored Senator Wilson and if it had been shaped

another way it would have favored Representative Haynes?

A Well, this was their opinion. I didn't share in it because, you know, when you take 466,000 people—I don't even recall the total population of the two or three or four counties involved. But in my opinion I doubt that it would make enough difference to be more than a drop of water in a pail of water. But they were strong in their opinions that it was significant. I didn't agree with them.

Q What was—was there any discussion, either during the regular session or in the special session, the conference committee, any speculation concerning Congressman Dowdy's

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health or personal difficulties, what affect that might have on the district over in East Texas?

A The only speculation that I recall in that particular area was press speculation, and I don't recall which writer wrote it.

Q Nothing in the committee?

A No.

Q Okay.

A No discussion along that line.

Q Now, would the same be true of any other encumbent Congressman that might be having health problems?

A Right. How that came out, I dropped out a thought provoker one time and somebody picked it up and said apparently that I had presumed that Mr. Dowdy wouldn't run. I had never met Mr. Dowdy at that time. The next one that I dropped out drew his regular district back intact as a thought provoker.

Q Representative Jones, I am almost finished here. I want to ask you about some particular matters that you have been quoted as saying in the press. The Hous-

ton Post quotes you on February 26, 1971, as follows: "Jones said he would certainly listen carefully, however, to the personal redistricting suggestions of his own Congressman, US Representative George Mahon of Lubbock, Chairman

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of the powerful House Appropriations Committee." Do you recall making that statement?

A Well, I am not sure. That may be an exact quote or it may not be, but generally the statement that I made with reference to Mr. Mahon was pointing out that certainly as Chairman of the Appropriations Committee it was important. That the entire State of Texas would receive services if we drew a district which did not disenfranchise him or endanger his reelection. And the second observation I made was—which may have all been in this matter and that may be a summary of the context statement, but being—since I was from Lubbock and he was a Congressman from this area, I certainly didn't want to try to mislead anybody and try to ignore his interest or ignore the interest of this area. So that generally is an accurate summary of the statement I would say.

Q All right. You are quoted in the Corpus Christi Caller on February 28, 1971, as saying: "Federal Courts have insisted that districts be equal in population"—well, it is not a quote, it is a paraphrase. It paraphrased you as saying, "Jones thinks the courts would tolerate a population spread of five per cent between the biggest and the smallest House district and 10 per cent on Congressional districts," which you have already indicated

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that that was your view at that time and still is.

A Yes. I didn't know that they had quoted it anywhere.

Q You are quoted in the Houston Post on February 27, 1971, as saying, that it is not the intention of the House committee, and I am paraphrasing there a little bit, "to gerrymander anyone," and that is a direct quote. They also quote you as saying, "District lines will be set to best evenly distribute population, taking into consideration economic, geographic and cultural ties of the area." Do you recall making that statement?

A This is sort of the general statement that I had made and I think probably I covered that almost in every press area. That is right.

Q You are quoted in the Houston Chronicle on April 6, 1971, as saying that you believe the Congressional district can be drawn that will require no encumbents to run against each other in 1972. This apparently was just after you had returned from a trip to Washington.

A Well, this, of course—the possibility that nobody would have to run against each other would be contingent upon whether or not they wanted to move into a different area because of no residence requirement.

Q What I am trying to get at here, Mr. Jones, I just want you to confirm whether you were accurately quoted in these

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excerpts that I am reading. Again I am trying not to keep anything—if you want to read these that I ask you about feel free to do so.

A That is quite all right. That is a pretty accurate statement.

Q You are also quoted in the same article as saying that you had worked out several options acceptable to each Congressman, do you recall making that statement?

A I don't recall it but I am sure that in our drawing of plans we had several options that each would agree to, but they were not a part of the total plan. Each man said, "This is fine with me." And Mr. Teague's summary was, "I know you have got a big problem, whatever you draw up I am going to live with it and I have no objection to it." And that sort of thing. I probably said that too. Sounds like I was trying to keep everybody happy.

Q Oh, one key thing. I believe I am about through. You, of course, were aware of the deviations from the mathematical ideal district in this bill that was passed by the House during the regular session?

A I don't remember specific figures, but I knew, you know, that they were not all perfect. So I guess my answer would be yes.

Q And you knew roughly what the deviations were, the highest

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and the lowest?

A I couldn't quote them for you now, but I knew.

Q Not now but you did then?

A Yes.

Q Okay. Of course, you worked on the conference committee bill. I take it then that you were aware at the time the conference committee bill was reported out that the tolerance in that bill was wider than the one in this bill passed by the House during the regular session?

A I was probably aware of it at that time, but I don't recall how much difference there was.

Q So it would be a fair statement to say that the House bill couldn't get through the Senate even though it had tighter tolerances?

A Right. And this is the compromise area that we—somewhere we had to work out a compromise

that apparently was upward on the deviations.

MR. FISCHMAN: I believe, sir, that I have no further questions. I thank you.

* * *

(P. 2)

Oral Deposition of

Oscar H. Mauzy

ANSWERS AND DEPOSITION OF OSCAR H. MAUZY, witness produced on behalf of the Plaintiffs, taken in the above styled and numbered cause on the 18th day of January, A. D., 1972, before JAN STROUD, a Notary Public and Certified Shorthand Reporter in and for Dallas County, Texas, in the offices of FISCHMAN, ROSENBERG, KASMIR & PRESTON located at 601 Kirby Building, in the City of Dallas, County of Dallas and State of Texas, in accordance with the agreement hereinafter set forth.

* * *

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DIRECT EXAMINATION

BY MR. FISCHMAN:

Q State your full name, please, Sir?

A Oscar Mauzy, M-A-U-Z-Y (spelling).

Q And you're a resident of Dallas, are you not, Sir?

A Yes, sir.

Q And you're the senator from the Sixteenth—

A Twenty-third.

Q —Twenty-third Senatorial District of the State of Texas?

A Yes, sir.

Q And I believe had the privilege of serving your district during the Sixty-second Legislature?

A Yes, sir.

* * *

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Q Let's see. Senator, among the committees that

you served on at the last session of the Legislature, I believe you did serve on the committee that was concerned with redistricting?

A Yes, sir.

Q What was the proper name of that committee?

A Congressional Legislative and Judicial Committee, I believe.

Q Was it broken down into any subcommittees?

A Yes. Early in the session when the committee was organized, it was decided that since we were going to be considering a House redistricting bill, a Senate redistricting bill and a congressional redistricting bill that we should divide the committee into two subcommittees, one on congressional

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redistricting and one on Senatorial. Because traditionally in the Legislature, the Senate accepts whatever the House writes for a House redistricting plan. The House traditionally accepts whatever the Senate writes for a Senate redistricting plan. And traditionally the congressional bill winds up in conference committee where both houses have a hand in it. I chose to serve on the Senatorial redistricting committee because I had no ambition to go to Congress. I wanted to look after my Senatorial district as best I could. Others, who were interested in going to Congress, chose to serve on the congressional subcommittee.

Q Well, let me ask you this: The lieutenant governor, as presiding officer of the Senate, appoints the committees, does he not?

A He appoints the committees and the subcommittees. I was given my choice by the lieutenant governor, as the other members were, as to which subcommittee we wanted to serve on. And he told me, "If you have got any ambition to go to Congress, let me know now, because I'll put you on the congres-

sional subcommittee." I told him I had no such ambition. I would prefer to serve on the Senate redistricting.

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Q To your knowledge did he offer that same option to all the other committee members?

A Yes, he did. And those who were interested in going to Congress, Senator Jordan and Senator Wilson, so chose to serve on the congressional subcommittee.

Q I believe Senator Patman was also on that subcommittee, was he not?

A He asked to be on that subcommittee, because, as you know, his father is a congressman, Congressman Wright Patman, and he was, of course, interested in trying to help his father get the kind of congressional district that he wanted.

Q Well, Senator, you have alluded in your answer to my two previous questions to wanting to protect your district and I believe you just mentioned that Senator Wilson and Senator Jordan wanted to go to Congress and Senator Patman wanted to look out for his daddy; what do you mean by that?

A Well, all of us knew when the session started that we had the redistricting. And each of us tried to, I think, protect the interest of his area and his own personal, political interest as best he could. I think it's inherent in a legislative body made up of elected politicians

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that you're going to have that point of view asserting itself.

Q How does one go about through the redistricting process, as you say, protecting oneself or preserving one's seat in the particular legislative house?

A The way I went about it was, a soon as the popu-

lation figures became available for the state and for the counties, I first determined how many people are—were required in the average senatorial district of Texas. I then determined what the population of my present senatorial district was. And I was one of the fortunate ones who come from a rural, excuse me, urban district that was overpopulated, so I then had the choice as to which part of the district would not be included in the district the next time around. I then proceeded to draw a plan for my senatorial district that I thought met, first the constitutional guidelines, the equality of population, compact and contiguous and community of interests and in all candor, also, a district with—that I could get reelected in. And I think each member of the Legislature tried to do that for himself.

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Q Well, when you say a district, that you tried—and let me say this, first of all, Senator. Fortunately, the legislative redistricting case is not my can of worms and I'm picking on you by way of illustration and not for any specific motivation and what you're telling me is strictly by way of example.

A Right.

Q So let me ask you this: How does the shape or the composition of your district affect your chances of being reelected?

A Well, there are some areas in my district where I run better than other areas; and therefore, the districts that—the precincts where I get the largest majority, I was most interested in keeping in my district. The areas and precincts where I hadn't done as well in the past and where, perhaps, my voting record was not in keeping with a majority point of view of those areas, I thought were entitled to have a senator who agreed with them more than me.

Q May I say that was beautifully put. And a lot of this stuff sounds—I think we all know what we're talking about, but I think it's useful to get it on the record as a matter of record.

* * *

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Q To your knowledge, Senator, were these same considerations applied in the drafting

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of the congressional districts?

A It was a consideration that—that everyone on the committee took in mind. I was not a member of the conference committee that wrote the actual final congressional redistricting bill, so I—I can't speak as to that. But I do know that we had available to us in the Senate redistricting committee all the demographic, ethnic material to show the ethnic and demographic make-up of each census tract, each enumeration district, and that we also had furnished us by the members of the Senate that I had earlier spoken to the breakdown by precinct in the four big-city counties of Texas.

Q In appointing the committees and subcommittees did the lieutenant governor give any instructions as to what criteria were to be followed in drafting the congressional redistricting bill?

A Yes. I don't remember whether it was at a formal committee hearing or whether it was in informal discussions, but he did indicate that he thought it was very important that the incumbents be retained in office, that their seniority in Congress was meaningful and influential and that wherever possible, that pairing of

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incumbents should be avoided.

Q Did the lieutenant governor mention any other

factors that were to be considered?

A As I recall, population was to be considered, community of interests. I don't recall whether he spoke to the question of compact and contiguous or not. I know we did talk about that in the committee and what it meant.

Q I want to ask you in just a minute what you did talk about in the committee. But, first, I want you to tell me what your understanding was of the term "community of interests"?

A Community of interests to me means several things. First, it's the difference between an agrarian economy and an industrial economy. Obviously, the community of economic interests that exist in Dallas County, Texas, is different from that in Loving County, Texas. The economy is based upon different things. Community of interests to me means urban as distinguished from rural problems. Community of interests to me means racial and ethnic make-up. Community of interests to me means problems of mass transportation in highly densely populated areas and farm-to-market roads in rural areas. It's the total thing that

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goes in to make up the economy and the culture of an area, as I understand it.

Q Was this the same understanding that you had at the time the Legislature was in session?

A Yes.

Q And your colleagues on the committee, would they have had the same understanding?

A No. There was—there was a difference of opinion in the committee that divided, basically, along rural and urban lines. The urban members tended toward the point of view that I have just enunciated. The rural members tended to think in terms of counties as a unit of government and as a—as the basic

unit that you use in putting together the number of people to make up a district; whereas, I think we in the cities don't attach as much significance to county lines.

* * *

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Q Now, with reference to the equality of population, what was the consensus of the committee as to what that meant?

A Well, here again, I was in a minority viewpoint. A majority felt that five per cent tolerance would and had been sustained by the courts and would be in this instance. I felt that, as I read the cases, there was no such thing as de minimis in population, that you had to be as precise as you could be, and that under the holding of the Missouri case, I believe it was, if the plan that was adopted had a greater population variance than a plan that had been rejected, that you were in trouble with the courts.

Q And you have just indicated that that was a minority viewpoint on the committee?

A Yes. A majority of the committee felt that five per cent, as long as you were within five per cent, you were safe.

Q Well, what do you mean by "five per cent"; is that the deviation between the smallest—

A From top to bottom.

Q The most overpopulated and the most underpopulated, the total spread would be five per cent?

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A Yes.

Q And that figure was bandied about in various committee, either formal, meetings or working sessions?

A Both, as I recall.

Q Well, I'm trying to get at what the approach of

the committee was, to your knowledge, and I don't know how to do it other than to ask you a leading question, which I'll proceed now to do.

A Well, perhaps, I can help you by volunteering what I—what it was my opinion was of prime consideration. There's a tradition in the Legislature that the Senate redistricts the Senate, that the House redistricts the House and that the conference committee redistricts the Congress. I had gone through this in '6 when we redistricted the congressional districts. And that the purpose of that is so that the lieutenant governor can work his will as to the Senate conferees and the Speaker can work his will as to the House conferees. That's common knowledge among the members of the Legislature.

Q And did that, in fact, occur in this case?

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A Yes, I think so.

Q What impels you to that conclusion?

A Well, we went through this congressional redistricting fight during the regular session. The House sent us a bill that went to committee and it was completely re-written in the Senate committee in the form of a committee substitute, which eventually passed and which the House refused to concur in and then which went to conference. And the conferees haggled for, as I recall, four or five days or a week before the regular session adjourned and were unable to agree on a bill. The point of contention was basically between the lieutenant governor on the one hand as influencing the Senate conferees and the Speaker on the other hand as influencing the House conferees. And it came down to two basic points of disagreement. The Senate conferees were stuck hard on the proposition that the East Texas district would be the way Senator Wilson wanted it drawn, he being

a Senate conferee. The House conferees were stuck hard on the proposition that that district would be drawn the way Representatives Haynes wanted it drawn, he being a House conferee. And the second point of contention was where the lines would fall

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in what became the Twenty-fourth or Mid-Cities District here in Dallas and Tarrant Counties.

Q What was the contention with regard to that?

A Well, the contentions were that we were to draw the line—the committee was to draw the line in the Fifth Congressional District in a way that Congressman Cabell wanted them. They were to draw the lines in Tarrant County the way Congressman Wright wanted them drawn. They were to draw the lines for the Third Congressional District the way Congressman Collins wanted them drawn. They were then to give Congressman Teague in the Sixth District whatever population was necessary on the south ends of Dallas and Tarrant Counties to flesh out his district. And what was left was to be the Twenty-fourth District.

Q To get back to my leading question awhile ago, you have given me a lot more to go into, but what I'm trying to get at is this: State whether or not it was the modus operandi or intention of the committee, to your knowledge, that they would take such steps as were necessary to protect the seats of the incumbent congressmen and if in doing so, they came within five per cent top to

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bottom, they felt it was all right?

A Yes, I think that was the prevailing majority point of view.

Q That's what I'm trying to find out. Then their basic approach then, was to take care of the congress-

men and then we'll see if it fits the numbers?

A To take care of the congressmen and to make it fit the numbers within five per cent, I think would be a more accurate way to put it.

Q Now, we might as well pursue this point while we're conveniently there. Going back for just a minute to your answer wherein you stated that the difficulty in the Twenty-fourth District was that Congressman Cabell wanted his drawn a certain way and then you enumerated on Congressman Price, Congressman—

A Wright.

Q —Congressman Wright, Congressman Collins and Congressman Teague, how did you know how they wanted their districts drawn?

A Two ways. First, five members of the House redistricting committee and four members of the Senate redistricting committee went to Washington to interview the congressional delegation

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in March. As I recall, it was March the 30th and 31st. Governor Smith loaned us his plane and his pilot. We left Austin at 6:00 one morning and flew directly to Washington. We met with the congressional delegation for lunch. Then the afternoon was given over to us to meet with individual congressmen to go over what they wanted done with their individual districts.

Q I take it you were on that trip?

A Yes. Then the next morning we again met with—well, let me go back for a minute. The luncheon, as I recall, was for the Democratic members of Congress. Then the next morning, there was a breakfast for all of the members of Congress from Texas, both Democratic and Republican, and to meet privately further and then come back to Texas.

Q What transpired, Senator, at this luncheon

meeting?

A Not much, really. Everyone was glad to see everyone else and everyone wanted to do everything to please everyone else. It was a very congenial luncheon. But there was nothing, either officially or unofficially, done there, which, I suppose, is normal if—considering the context of the meeting. I, then, personally went over to

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Congressman Patman's office. He turned his office over to us to meet with the individual members of Congress. As I recall, Congressman Roberts came by and met with us privately. Congressman Wright came by and met with us privately. Congressman Roberts came by and met with us privately. Then we went over to Congressman Teague's office and met with him. Congressman Eckhardt came by and met with us privately. And the next day, we met with two or three others. Congressman Purcell. And I'm—I'm sorry. That's all I can remember specifically.

Q Do you remember Congressman Cabell meeting with you?

A No. Congressman—I talked with Congressman Cabell at the luncheon that we had and he and I had talked on the phone prior to that time. He told me of his preferences and then I asked him to reduce it to writing and mail it to me. He then sent his three alternative plans in rank and preference to him as to how he would like his district lines to be drawn since he was also in the fortunate position of being overpopulated and having to cut down the size of his district here in Dallas County.

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Q What specifically did he recommend to you; do you recall?

A Yeah.

Q Or as specifically as possible?

A My—his first preference was to draw his—the southeast—southwest line of his district at the Trinity River. Under the old redistricting plan, he had ten precincts in Oak Cliff that were in his congressional district that were in my senatorial district. And he was overpopulated and he made the point that it would be logical to—to lop those ten precincts off and just stop at the river.

Q Did you ever have occasion to discuss with him the voting patterns or the socio-economic composition of those ten precincts?

A Yes. He and I were both familiar with them. They're predominately black precincts that he always carried in November, but never carried in the primary.

Q And he was aware of that?

A Yes.

Q As a matter of coincidence, they were in a convenient place to lop them out of his district?

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A I think it made sense to take them out. Because, first of all, Oak Cliff was cut up by taking those ten precincts out of Oak Cliff. I loo kupon Oak Cliff as a recognizable political subdivision. Although it's part of the city of Dallas, we who live in Oak Cliff tend to think of Oak Cliff as part of the city of Dallas that's recognizable for its unique problems. And the river, of course, is another reason. But I, personally, was not adverse to doing it, because I was trying to create a congressional district where Oak Cliff would all be together rather than being divided between congressional districts.

Q Well, isn't it a fact—I don't mean to belabor this point, Senator—but those ten precincts would tend to have less of a community of interests with the rest of Oak Cliff than they would with the near South

Dallas area?

A That has been true in the past. As the black population migrates west in Oak Cliff, I think it will be less true in the future.

Q What other specific discussions do you recall up there in Washington, Senator?

A Well, I remember Congressman Roberts came by and told us that he had in the past had a

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portion of the northeast corner of Dallas County up around Garland, but he would be just as happy not to have that in his district. Congressman Teague told us that he was going to have to expand his district further into the Dallas and Tarrant County areas to get the necessary population, because the rural counties in his area were declining in population; whereas, the south ends of both Dallas and Tarrant County were growing in population.

Q Do you feel that there is a community of interests between the areas of Dallas and Tarrant Counties in Congressman Teague's district with the remainder of his district?

A No, I, personally, do not. And that's one reason I voted against the bill. I would have preferred and I introduced an amendment that would have created five congressional districts in the Dallas-Fort Worth standard metropolitan statistical areas.

Q How were these views of these congressmen expressed to you; in other words, did you get a reading as to whether they were concerned; did they express it to you in an emphatic manner or how was this done?

A Well, it was very congenial. Most of

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the members of Congress had either served in the Legislature or in some other public office before they

were elected to Congress and they understood that the Legislature had to draw the lines. What I'm saying is that people who have been through redistricting fights before kind of know how to talk to each other. And there was no threat or belligerency or anything of that kind. Each of them indicated their preference to us. And sometimes, we would ask why and sometimes we wouldn't, truthfully.

Q Well, being privy to some of these conversations and seeing the shape of the final bill, can you say that the final bill did, to a great extent, take these preferences into account?

A Yes. I remember, specifically, I wondered why Congressman Mahon had not come by, because the lieutenant governor had indicated to us and the House members on this trip had told me that the Speaker had indicated to them that it was very important that Congressman Mahon's lines be drawn the way he wanted them since he's chairman of the House Appropriations Committee and that committee and his chairmanship is very important to Texas. But he never did come by to see us.

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It's common knowledge that he was in touch with both the Speaker and the lieutenant governor by telephone. As a plan would be devised, he would be advised of it, particularly as it affected him. One of the bills that was orginally, I think, passed by either the House or the Senate, I can't remember which now, had Congressman Mahon redistricted in with Congressman Price, I remember. The district ran from Lubbock up the west side of the Panhandle. And that caused a great deal of concern.

Q That plan, I take it, was not ever seriously considered?

A I think it may have passed one house or the

other, but I—I truthfully don't remember. I'm sorry.

Q Now, I want to ask you: You have some familiarity with the various plans that were passed?

A Yes.

Q You also have some familiarity with some of the plans that were introduced?

A Yes.

Q Did you, in fact, introduce any plans?

A Yes. I introduced both in the

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committee and on the floor of the Senate a plan to create five congressional districts in the Dallas-Fort Worth SMSA.

Q SMSA being Standard Metropolitan Statistical Area?

A Yes.

Q Can you tell us something about those, the population variances, the general geographical parameters?

A I can give you the legal description of it. I'm sorry. I thought I still had the population figures, but in going through this, I could not find. My recollection is that within the, I believe it's, ten counties that comprise the Dallas SMSA and the Fort Worth SMSA we were about forty thousand short on population for five congressional districts. It was my judgment that since we were a faster-growing area that that would be permitted under the holding in Kilgarlin. And so I then introduced a plan that would have created those five districts in those ten counties. And I have it here in the form in which it was submitted on the floor of the Senate. It then reshuffled the rest of the state to make it conform with this. And this is it if you want it.

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Q Is this an extra copy?

A Yes.

MR. FISCHMAN: Have that marked, please, Ma'am.

(Whereupon instrument was marked P-1 and is hereby made a part of this deposition.)

Q Senator, you have just handed me an instrument consisting of three typewritten pages, which the reporter has marked as Plaintiff's Exhibit Number One. I'll ask you, Sir, if you are able to identify that as a duplicate original or a copy of the plan that you introduced that you have just been discussing?

A Yes, it is. This is the floor amendment that I offered on the floor of the Senate to House Bill 782 during the regular session.

Q Did you introduce any other plan, Senator?

A This next is a description of the five congressional districts within that ten-county area by census tract number that we had drawn to meet the equality of populations item.

MR. FISCHMAN: And I'll have her mark this.

(Whereupon instrument was marked P-2 and is hereby made a part of this deposition.)

Q You have just handed me a handwritten instrument consisting of three legal-size pages, which the reporter has now marked as Plaintiff's Exhibit Number Two, and you're able to identify that as what, now?

A This is a Xerox copy of the detailed description of the lines within the ten-county area to contain five congressional districts, marked District A, B, C, D and E, which I introduced both in the committee and on the floor of the Senate.

Q That goes with Plaintiff's Exhibit Number One?

A Yes. I had also introduced in the committee a plan which was forwarded to me by a gentleman named Buerger, B-U-E-R-G-E-R (spelling), from Lubbock, who had written—excuse me, from Irving,

who had written me that there was really nothing to congressional redistricting and he sent me a roadmap of Texas where he had drawn the lines to redistrict the state into twenty-four congressional districts.

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Q Did you run population figures on this, Senator?

A Yes, I did and they were also run for me by Dr. Luther Hagard, H-A-G-A-R-D (spelling), who is a professor of government at the University of Texas in Arlington and who had worked with me in the old Kilgarlin case in drawing legislative redistricting proposals.

Q And do you have a summary of that plan in typewritten form, as opposed to just this map?

A Yes. I have here a—a statewide map in a summary form that Dr. Hagard sent to me.

Q This consists of one, two, three, four, five pages, one of which, the first of which is a cover letter, the second of which is a map of the state which seems to be outlined into twenty-four congressional districts and the remaining three pages seem to list the counties and portions of counties in each district according to this plan; is that correct?

A With population figures, yes.

Q With population figures.

MR. FISCHMAN: Could I have this marked, please?

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(Whereupon instrument was marked P-3 and is hereby made a part of this deposition.)

Q Do you want to keep the original?

A No. That's all right. I can get it back after trial.

Q I'll hand you back what you have just handed me and which I have just described for the record and has now been marked as Plaintiff's Exhibit Number Three and ask if you're able to identify that as

the so-called Buerger plan?

A Yes, this is the Buerger plan as sent to me by Professor Hagard.

MR. FISCHMAN: Off the record just a second.

(Off-the-record discussion.)

Q (continuing by Mr. Fischman) I have got in my hand a map which appears to be one of the oil company maps of the state and also has some smaller maps of the major metropolitan areas and it has some blue lines on there, purple lines on there outlining what appear to be congressional districts, each of which is numbered, and which you gave to me out of your files; is this what Mr.

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Buerger sent to you?

A Yes, it is.

Q And that was the sum total of what he had done. And then did you receive this from Dr. Hagard unsolicited or did you refer it to him for consideration or what?

A As I recall, Mr. Buerger sent it to me and then I asked Dr. Hagard to—to run it through to see how it came out on population. And I believe Plaintiff's Exhibit Three is the summary that Dr. Hagard prepared based upon the roadmap.

Q And you did offer that as an alternative bill on congressional redistricting?

A I don't believe I ever formally had it typed up in bill form. I—one day when we were having a committee meeting, I showed the other members of the committee the roadmap and I said, "This—this is a plan that has been sent to me by a fellow in Irving and it looks to me like it has got a lot of merit." But it was pretty quickly determined that a majority of the committee didn't think it had merit and I knew I couldn't pass it, so I never went to the trouble of typing it up.

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Q What fault did they find with it, Senator?

A Well, basically, they said it paired too many incumbents. As I recall, it paired six incumbents into three districts, but I, again, I'm going on recollection.

Q Was there any other objection voiced to it?

A That's the only one I can recall.

Q Were there other plans submitted, not necessarily—or considered by the committee—not necessarily those that you prepared or had anything to do with?

A As I recall, there were three or four amendments offered in the committee, all of which were rejected. And I believe those same three or four were offered on the floor and were rejected there, also.

Q Do you remember any specific reasons for the rejection?

A I—I remember what the members said as to why they were opposed to them. I don't know that those were the real reasons. I introduced, as I say, I introduced my plan, which was rejected, both in committee and on the floor. Senator McKool

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had a plan that he introduced that was rejected, both in committee and on the floor.

Q Was that the so-called umbrella plan?

A I don't recall that terminology. Mine was called the fish-hook plan or something, because it looped around Tarrant County and took in Johnson, Parker, Wise and Denton and then around to Rockwall. And Senator Hall specifically objected to that. I don't recall, really, what Senator McKool's plan did.

Q And is it fair to say that these plans were rejected in large part because of the pairing of incumbents?

A I think so. The—the committee substitute had

been drawn up and worked out by the subcommittee on congressional districts. And as I understand it, it had been checked with and cleared by various people. And this was what we were going to run with in the Senate. As I recall, there were ten of us who voted against it and twenty-one voted for it, I believe.

Q Are you familiar at this time with plan, or with House Bill 782 that was passed, I believe, by the House at the regular session?

A Generally familiar with it. I don't

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recall the details of it.

Q Do you recall the deviation from top to bottom on that plan, Senator?

A If I remember correctly, it was about two and a half to three per cent.

Q Does that two and a half sound right to you?

A I think somewhere in that area, yes. I remember the House plan was—had less population deviation than the Senate substitute to the House plan.

Q You're aware of that now; were you aware of it at the time during the session?

A Yes. And I was also aware that House Bill 782, as passed by the House, had less population deviation than Senate Bill 1 of the special session, which eventually became the congressional redistricting bill.

Q And were your colleagues in the Senate aware of that?

A Yes.

Q Was the lieutenant governor aware of it to your knowledge?

A I'm sure he was.

Q And the Speaker?

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A I'm sure he was, too.

Q And I know you don't have too much business

down at the other end of the Capitol, but was Representative Jones and his committee aware of the—

A Yes, they drew the original House plan, House Bill 782, and—and they rejected the Senate substitute for House Bill 782, so I'm sure they were very familiar with it.

Q Now, at the special session the Senate passed a bill and sent it to the House and they passed a House substitute, which was, in essence, the same plan as the 782 that had been passed by the House during the regular session; is that correct?

A Yes.

Q And it was also two point five?

A That's my recollection, yes.

Q And yet, both 782 and the House substitute to the S Bill 1 passed by the Senate at the special session were both two point five off?

A Yes.

Q Can you tell me, Senator, why the conference committee approved and sent through the

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legislative process back to each chamber of the Legislature a bill that was either four point one or four point nine per cent off?

A The way the conference committee report on Senate Bill 1 was presented to us was that this was the only bill that the conference committee had been able to agree upon. If I may go back in history, during the approximately the last week of the regular session, the conference committee had been meeting on—on House Bill 782 and had been unable to come up with a conference committee report, primarily because of the congressional district in East Texas in which Senator Wilson and Representative Haynes were interested and the Mid-Cities District in the Dallas-Fort Worth area. I'm told that the conference committee

during the special session meeting on Senate Bill 1 met all night long and finally hammered out Senate Bill 1, the conference committee report on Senate Bill 1, which basically was the Senate plan.

Q Well, what I'm trying to get at is this: Why did the conference committee reject a bill that was only two point five per cent from top to bottom in favor of one that was four point

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one?

A Basically, I think the reason is—is because the Senate conferees and the lieutenant governor wanted Senator Wilson to have a congressional district to run in and persuaded the House conferees to adopt that plan as distinguished from the plan Representative Haynes had that he wanted to run for Congress on.

Q Do you recall what 782 did as far as pitting one incumbent against another?

A I'm sorry, I don't, no. I think it did pair some incumbents, but I don't—I just don't remember how many.

Q Well, I gather from your testimony thus far that the basic hassle in the conference committee was not the fact that incumbent, protecting incumbents was a problem. I think everybody agreed on that. And it turned out that the basic problem was the matter of political compromise or expediency?

A Yes, I think that's—that's a fair statement. Let me add one other thing: I never considered the pairing of incumbents to be important, because as I understand it, you don't have to live in a congressional district to run

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for it. And so to me when you talk about pairing incumbents, first of all, I don't think it's a legitimate consideration. Secondly, I don't think it's a legal con-

sideration, because if I, as a citizen of Dallas County, want to run for Congress from the El Paso district, I can do so. There's nothing in the law to prohibit it, if—if I understand the law correctly.

Q Let me see, now. Representative Jones in his deposition testified that House Bill 782 had no chance of passage in the Senate?

A I think that's true.

Q And would you tell me—again, I'm trying not to lead the witness—what the reason was?

A Well, there were a number of reasons. I would not have voted for House Bill 782 because it totally decimated Oak Cliff. As it turned out, Senate Bill 1 did, also. A couple of the rural senators didn't vote for it because their congressman was adversely affected by it in their judgment. I think that most of the members of the Senate were sympathetic to the congressional ambitions of Senator Wilson and Senator Jordan and they didn't like it. There—there are many

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considerations, I assume, that dictated to each member whether he would vote for it or against it. Those are some that I know of.

Q Of the bills that were introduced and the various amendments and so on, is it your view that SB 1 as passed by the conference committee was the only bill that could get through the Senate?

A No, I don't agree with that. I think SB 1—at the time, everybody wanted to get out of that special session and get home. But—but I think it could have been possible to—and frankly, I was in favor of hanging up that special session and coming back until we got, what I considered to be, a realistic bill. Under the press of the special session, I—I do think Senate—the conference committee report on Senate Bill 1 is the

only one that both the House and Senate were willing to pass at that time in history.

Q And I gather that the willingness or unwillingness was not predicated solely on factors of population?

A I don't think so. I think what it came down to was that the Senate finally forced the House to cave in on the conference committee

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report on Senate Bill 1 when they had not been able to force the House conferees to cave in on House Bill 782 during the regular session.

Q Senator, you indicated earlier in your testimony that the amendments that you introduced as reflected by Plaintiff's Exhibits One and Two to your deposition took into account the fact that urban areas were growing at a substantially faster rate than other areas in the state?

A Yes.

Q And that you could underpopulate those for that reason?

A Yes.

Q Do you know of any systematic effort that was made to make those determinations with respect to SB 1?

A As far as I know, they were not made.

Q Was any effort, to your knowledge, made on a statewide basis to take the growth rates and growth versus declining factors into consideration?

A Not to my knowledge.

Q Other than in the amendments that you

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introduced as reflected by Plaintiff's Exhibits One and Two, do you know of any effort made to consider the percentage of non-voters and transient population in the final, in SB 1?

A No, because at the time that Senate Bill 1 was passed, the registration bill had been passed earlier that required that college students would be required to register at the residence of their parents rather than where they were going to school. That has since been held unconstitutional. But at the time, I don't think—

Q Some allowance for transient population, at least for students, was not a factor at all in drawing the congressional bill?

A That's right.

Q And do you know if any study was made with reference to the transient military population?

A Not to my knowledge.

Q And the same would be true with respect to studying the percentage of population that was under the age of eighteen and non-voters?

A No, I don't think—again, not to my knowledge, it wasn't done. I do know that the voting patterns of precincts, the percentage of

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turn-out of registered voters and those kind of things were considered by all of us in both informal discussions and in committee hearings.

Q This would have had to do with not necessarily how many voters, but how they voted?

A Yes.

Q Did you attend all the committee meetings on congressional redistricting?

A Yes.

Q How many were there?

A There was an organizational meeting and I don't believe there was, then, another full committee meeting until we had the House Bill 782 before us. Then—

Q How—excuse me. Go ahead, Sir.

A Then I believe there was a third meeting of the

committee when the committee substitute for House Bill 782 was voted out. And then I believe there was one meeting of the—a pro forma meeting of the committee during the special session in which Senate Bill 1 was reported out.

Q Were these committee hearings devoted to debate on these various measures?

A No. As I have indicated, the first

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meeting was just an organizational meeting at which the two subcommittees were named. The second meeting was for the purpose of hearing House Bill 782 and referring it to the congressional subcommittee. The third meeting was for the purpose of reporting out the committee substitute for House Bill 782. And the fourth meeting was to report out Senate Bill 1 in the special session. Altogether, those four hear—those four committee meetings didn't last an hour and a half.

Q Well, when and how was work actually done on these bills, the best you can tell?

A It was—it was done basically by Senator Word and his staff. He was the chairman of the committee. He had an office set up for the committee next door to his Senate office in the basement of the Capitol building where all the census information was available and all the maps and the staff of the committee were there constantly working on plans, both senatorial and congressional.

Q How much time did the committee get to consider the bills that were voted on?

A As I have indicated, the four meetings, altogether, I don't think consumed an hour and a

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half.

Q Well, would you be given a copy of the bill in

advance of the committee meetings?

A No. It's normally laid out at the committee meeting. The committee is called to order and the clerk passes out the copies of the plan.

Q And then you're expected to vote on it?

A Yes.

Q Without any time to study it?

A Well, most of us were checking in with the staff down at the basement from time to time, I was, to see where the lines were being put. But there was—there was no formal presentation or—or debate as such on it in the committee. Again, if you will understand, it's generally assumed by everyone in the Legislature that the congressional bill is always going to wind up in a conference committee; and therefore, what's done on—in committee or on the floor is largely form and not substance.

MR. FISCHMAN: Let's take just about a minute break.

(Whereupon a short recess

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was taken, after which the following proceedings were had.)

Q (continuing by Mr. Fischman) Let me cover one more thing with you, Senator, and then I believe I will be through with my direct examination. You indicated very early in your testimony here today that concern for geopolitical boundaries, particularly county lines, was a matter of importance to the rurally-oriented members of the Legislature. Can you say to what extent that was a factor that was considered?

A Well—

Q With reference to the congressional redistricting bill?

A I think the rural members proceed from the premise of county lines and they—they tend to the

point of view that you start in the rural areas and redistrict in toward the population centers. So to that extent, county lines are very important to them. As best I understand their position, that's what it is. Those of us who think that you ought to start in the urban areas and work out, I don't think pay as much attention to county lines.

Q Do you recall any instances in regard

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to SB 1 where urban population was used to flesh out rural districts?

A Oh, yeah. Congressman Teague's district, of course, is—was a classic example both in—in '67 redistricting and this year's. And as I recall, I believe that's also true of Bexar County, but I'm—

Q Well, I was going to make reference to the district in which Congressman Fisher is presently the incumbent, I believe that one stretches all the way from San Angelo to the northwestern quadrant of Bexar County?

A It used to, I know. I don't—I don't recall the details of this bill that was passed this time as to whether it does or not.

Q Do you know the reason why it does that?

A To furnish the necessary population to fill out his district.

Q Would the same thing be true of Representative Kazen's district, the one that stretches from Laredo up through the southeastern quadrant of Bexar County?

A Yes.

(Off-the-record

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discussion.)

Q (continued by Mr. Fischman) Here's what I want to ask you, Senator. According to SB 1, the Six-

teenth District, El Paso district, is something in excess of eleven thousand overpopulated; do you know what the reason was for that?

A No, I don't. The El Paso district, obviously, when you start in El Paso you have got but one way to go and that's east. But why the line was drawn where it was, I do not know.

Q What about, the Fifteenth District is some eight thousand underpopulated; do you know what the reason for that was?

A No, again, I don't. Again, I see it's—you start at the bottom of Texas and, obviously, there's only one direction to move and that's north.

Q You don't recall that any specific allowance was made for population trends in either of those districts?

A Not to my knowledge.

Q Would you, if you know, know whether the Sixteenth District is a growth or a loss area?

A I'm sorry. I would have to look at

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the figure. I don't know right off the top of my head.

Q And would your answer be the same with respect to the Fifteenth?

A Yes. I'm not familiar with that area.

(Off-the-record discussion.)

Q (continuing by Mr. Fischman) Senator, my last question is this: SB 1, I think we're all agreed, is four point one per cent deviation from top to bottom. After the bill was finally laid out in the conference committee, was any effort made, to your knowledge, to adjust it to come to closer tolerances?

A Not to my knowledge.

Q Did you have a good knowledge of what the conference committee was doing?

A Well, yeah, we all kind of—those of us who

weren't on it were kept informed by those who were. And again, the basic fight over there was, as I understood it, was between Senator Wilson and Representative Haynes as to the East Texas district and what was going to happen in the Dallas-Fort Worth area for the new district.

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MR. FISCHMAN: I believe with that, I'll pass the witness.

MR. QUICK: Can we take a small break?

MR. FISCHMAN: Sure.

(Whereupon a short recess was taken, after which the following proceedings were had.)

CROSS-EXAMINATION

BY MR. QUICK:

Q Senator Mauzy, I want to backtrack a little bit to clarify in my own mind some of the things that you mentioned earlier. You were not a member of the Senate subcommittee that was directly concerned with congressional redistricting, is that correct?

A Yes, sir, that's correct.

Q Just exactly what did you, what relation to that subcommittee did you have?

A Well I, as I indicated on direct examination, I would go by the committee's office from time to time and visit with Greg Hooser and the others who were working on the plans. At various times, different people would send me proposed plans for—particularly for Dallas

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County that I would take down to the committee. I talked with the members of the subcommittee on their regular basis as to how they were coming, whether it looked like we were going to be able to get a bill and that sort of thing.

Q Now, where was this subcommittee office?

A It was down in the basement of the Capitol adjoining Senator Word's office just as you get off the elevator.

Q What kind of reception did you receive from the subcommittee when you would present these various plans or parts of plans that you talked about?

A Well, I think that I was accorded the same courtesy in the hearing that any other member of the Senate was by the committee.

Q Did any member of the subcommittee or Senator Word as chairman of the Senate redistricting committee, generally, have any discussion with you as to why some of our proposals were not acceptable or were acceptable, as the case may be?

A Yes. From time to time, we—all of us would discuss different plans informally.

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And basically, there was just a difference of opinion about the necessity of preserving incumbents. As I indicated on direct examination, to me that was not a valid consideration. A majority of my colleagues disagreed with me.

Q What was Senator Word's attitude toward that?

A He thought that, as I recall, where a possible incumbent should be preserved because of the seniority they had built up in Congress and for the other reasons that we talked about earlier.

Q Did any of your constituency ever contact you with regard to the protection of incumbents that might be in your particular senatorial district?

A I remember I got a resolution from the Oak Cliff Chamber of Commerce on congressional redistricting that wanted Oak Cliff preserved as a congressional—as a unit within a congressional district. Oak Cliff does not have enough population to form a congressional district by itself. And it also asked that

Congressman Teague's part of Dallas County be preserved, which I thought was a little bit inconsistent, personally. They—

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that's the only resolution I recall receiving. Various constituents would call me in Austin or see me on the week ends when I was home about they hoped that this plan or that plan could be adopted.

Q With regard to the Oak Cliff resolution, what was your attitude toward it, once again?

A Well, as I say, there was a little inconsistency in the resolution in that they asked that all of Oak Cliff be contained within one congressional district, but at the same time they asked that whatever portion of Dallas County had to be added to Congressman Teague's district to bring it up to population, that that be done. And the two were inconsistent. You couldn't do both.

Q Did you transmit this resolution and your feelings with regard to it to Senator Word or any member of the subcommittee?

A The resolution, as I understood it, had been mailed to each member of the Senate, not just to me.

Q Did you have any discussions with Senator Word or any member of the subcommittee with

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regard to that resolution, that you recall?

A I believe so. As I remember, Senator Word and Congressman Teague and I discussed it together in Congressman Teague's office when we were on the trip to Washington.

Q And what was the nature of that discussion, if I may ask?

A Well, I pointed out that—that the resolution was inconsistent, that Oak Cliff could not be preserved as a unit and at the same time Congressman Teague's

district filled out in Dallas County. That if Oak Cliff was going to be preserved as a unit and if Congressman Teague's district was going to have to be filled out from the Dallas-Fort Worth area, it would have to come from the Tarrant County side, rather than the Dallas County side.

Q I suppose what I'm getting at is the nature of the constituency's feelings about redistricting and whether or not this was conveyed to the various members of the subcommittee, and I gather from your comments that this was done on occasion?

A Yes, I think that the members of the subcommittee sought as much information as they

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could get from the other members of the Senate about how the lines should be drawn. I felt that the members of the Senate committee were trying their best to do their duty.

Q You don't feel, then, that the actions of the subcommittee in voting out Senate Bill 1 were in any manner trying to force a bill down the Senate's throat, if I may use those expressions?

A No, because it's like any other bill that comes out of committee, it's going to have to get sixteen votes on the floor. And the other factor, we all knew that the congressional bill was going to wind up in conference committee, anyway. And frankly, nobody was of much mind to try to make a major production out of shaping or changing that bill on the floor, because we knew that eventually we would be called upon to vote yes or no on a conference committee report that we would not have the opportunity to try to amend.

Q In other words, the work of the conference committee would be generally given considerable weight, if not final weight?

A Well, Jim, you have been around and as you know, the saying down there is that the conference committee report is good if it can get

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sixteen votes in the Senate and seventy-six votes in the House. And normally, they don't report a bill from the conference committee until they have assured themselves that they have the votes to pass it.

Q With regard to Senate Bill 1 when it was finally voted on in the Senate and in the House on final passage, was there any discussion of that bill?

A As I recall, there was very little, if any. Enough—we had been through this fight before in the regular session. Everyone pretty well knew whether they were for it or against it. Everyone pretty well knew why they were for it or against it. I remember, I believe it was Senator Hall who voted against it because it, as he said, decimated the old Fourth Congressional District. As I recall, Senator McKool and Senator Harris and I, all three, voted against it from Dallas County, because we thought Dallas County had been decimated. I think Senator Kennard from Tarrant County voted against it for the same reason. Each of us knew pretty well and—and it was the last day of the regular session and—and the feeling that everybody wanted to get through

(P. 60)

and get home.

Q I believe you stated earlier that it was your idea that there was no systematic effort to apply population trends to the various congressional districts set out in Senate Bill 1. What leads you to that conclusion?

A I said not to my knowledge. At the time we had our first hearing in the Senate committee on congressional districts, I had raised the point that under the

Kilgarlin Case I thought that it was permissible to take into account population trends. A majority of the members of the committee at that time indicated they disagreed with me. That's the only knowledge I had that—how the majority felt about it.

Q Well, with regard to the six congressional districts that take in part or all of Tarrant and Dallas County, do you know what the variance in population of those six districts would be; do you have any knowledge of that?

A Of the districts that presently take in all or part of Dallas and Tarrant County?

Q Yes, sir.

A Not off the top of my head, no.

Q Do you have any information about

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the population trends in that Dallas and Tarrant County area?

A I'm generally familiar with them, yes.

Q What would that be?

A That the Dallas-Tarrant County area is growing at a faster rate than the state as a whole.

Q If systematic population growth trends were being applied to these six districts, all or a part of which encompass Tarrant and Dallas County, it would be reasonable to assume, I take it from your testimony, that these six would be underpopulated with relation to the norm of four sixty-six five thirty?

A Well, certainly, those congressional districts that are totally contained within Dallas and Tarrant County, that would be true. I think it would also be true as to Denton County and Collin County, because these counties are growing faster than the state as a whole. They did from '60 to '70. And with the new regional airport and based on every projection I have seen, will continue to in the decade of the '70's. Now,

I think some of the rural counties, for example, in the Sixth Congressional District, Congressman Teague's, in

(P. 62)

the southern end of that district, are declining in population and have been in the decade of the '60's and will continue to in the decade of the '70's.

Q Representative Teague's district, Number Six, then, you would not be surprised to find that it carried a plus deviation or an overpopulation?

A As I recall, about forty per cent of his population is in the Dallas and Tarrant Counties portions of the district. Those districts will be growing faster than the state. And the southern end of his district, as I recall, is declining. Certainly, Limestone and those counties down through there are. I would assume that if there was any systematic approach taken to it that those two factors would be weighed.

Q Do you know of your own knowledge any district that would be considered to be declining in population that did not carry an overpopulation figure?

A Well, again, I would have to look at the map and look at the figures to really answer that question intelligently. I think it's fair to say that the First Congressional District is an area

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of declining population. It was in the decade of the '60's through the '70's. I think it's fair to say that the Second Congressional District is an area of declining population. And my recollection is, although I'm not sure, I think the Sixteenth, the far West Texas area, is not growing as fast as the state as a whole. And I believe the Fifteenth in South Texas, that would also be true.

Q Both the First, the Fifteenth and the Sixteenth are in extreme corners of the state. Could you tell us

a little bit about the problems involved in redistricting with regard to districts in such extreme corners?

A. Well, actually, when you start from a corner of the state like that, your problem is somewhat solved for you in that you have but one direction to move in. Starting with El Paso, you have obviously got to move west and it's relatively easy to just keep moving—excuse me, you have got to move east. You have got—you just keep moving east until you get to the point where you have got enough population and you drop your line. The same thing is true of the Panhandle district, the Thirteenth. You start at the top of the Panhandle and just come down. The same thing, the

(P. 64)

Fifteenth, from the south. And the First from the northeast. Texas, the population of Texas is such that I think you can start from those extreme corners and work toward the middle of the state and at the same time, start from the popuation centers and work out and not do conflict with each other. I don't think that's ever been done in a congressional bill, but I think it can be done.

Q Do you think it's possible to apply a systematic population growth trend to Texas and come up with a bill that is—

A Yes, I—I do. I think it would be a lot easier if we had censuses every five years instead of every ten years, truthfully, because the economy of Texas is—is changing so rapidly that the census projections for 19—for the decade of the '60's proved to be too conservative in the growth patterns of Dallas-Fort Worth and Harris County and proved to be not conservative enough as to the declining areas in East Texas and West Texas, both.

Q Did any member of the Senate subcommittee relating to this congressional redistricting inform you

as to whether or not they intended to use population trends in preparing the

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districts?

A No, they did not.

Q Did they tell you one way or the other?

A No, they did not.

Q Senator, you had during the direct examination considerable discussion of the problem with House Bill 782 and why it was not acceptable to the Senate. Where is Representative Haynes' home district; do you know?

A He lives in Vidor, which is in Orange County. It's in extreme Southeast Texas.

Q And where does Senator Wilson live; do you know?

A Angelina County. Lufkin.

Q Do you know what the current make-up of the congressional district in that area is at the present time, not with regard to the '72 elections, but as it existed with regard to the '70 elections?

A I know generally what it is. Congressman Dowdy presently occupies that office. His home is in Athens in Henderson County. It's basically an East Texas rural district.

Q Did you have occasion to see a map of House Bill 782?

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A Yes, sir.

Q And see what the district proposed by that bill looked like? Could you describe it to us?

A I think Senator Word's words coined the phrase, "It was a backward C." It was drawn in such a way that Angelina County where Senator Wilson lives was excluded from the district. And as I recall, it curved around like a backward C.

Q Was there a great deal of discussion about this in the press?

A As I recall, there was. The press likes to talk about the salamanders and gerrymanders and lizards and reptilian shapes and they had a field day with these lines.

Q What was the general attitude in the Senate about the proposal by Representative Haynes?

A I think it's fair to say that if the choice were between helping Representative Haynes and Senator Wilson that we in the Senate wanted to help our colleague go to Congress rather than Representative Haynes.

Q Would that same feeling be predominant in the House the other way?

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A I would think so. I never served in the House, but I would just assume that that's true. Senator Wilson's a great salesman for himself and he got as many of us to try to help him with his ambitions as he could. I'm sure Representative Haynes did the same on his side.

A Are you aware that under Senate Bill 1 that particular district now includes both Orange and Angelina County?

A Yes.

Q So that Representative Haynes and Senator Wilson, if they were to announce for the Congress, would have to run opposed to each other?

A Yes. As I understand it, this plan was acceptable to Senator Wilson because the majority of the congressional district is in his present senatorial district that he presently represents.

Q Well, we have had a good bit of testimony on this, but I'm going to ask you once again. In your opinion what was the chance of passing out House

Bill 782 as it was presented in the special session?

A The House substitute for Senate Bill 1—

Q Well, that—

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A —which was in substance House Bill 782?

Q Yes, that's correct.

A There would have been none in my opinion.

Q And Senate Bill 1, how would you characterize that bill with regard to its chance of passage?

A Well, it obviously was going to pass the Senate, because it was the same as the Senate committee substitute for House Bill 782 in the regular session that we had already voted on and passed. I happen to have been in the minority on that, but a majority of the Senate passed it.

Q And what about the House's attitude with regard to it?

A Well, obviously, it was not acceptable to the House as it came over in the special session, because they, then, immediately substituted the provisions of House Bill 782 in the regular session as the House substitute—

Q I suppose what I'm asking you is: With regard to the reports from the conference committee to the Senate and to the House on Senate

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Bill 1, what was the general attitude of the House and the Senate with regard to that conference committee report? I know it passed. What I'm asking you is the general attitude with regard to it?

A The general attitude was that it was one that would get a majority vote in both the House and the Senate, I think, primarily, because everyone was—was exhausted and wanted to pass some kind of a bill and get home. I think that both the House and the Senate more or less took the position that whatever the con-

ference committee comes up with, we're going to vote for so we can quit and get out of here.

Q Well, I'll ask a very dangerous question. Do you think it was a good bill?

A No, sir, I don't or I wouldn't have voted against it. I think a much better plan could have and would have been drawn if we had stayed there.

Q Let me ask you about that. Just how much pressure was there for leaving, getting out and going home at that particular time?

A There was a great deal of pressure. The regular session, I thought, had ended in total

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chaos. Everything got logjammed up toward the end of the session. I remember the last—the last night of the regular session, we had five filibusters going on simultaneously, one within the other. Everyone was aware of the fact that all of us in the Legislature were being criticized because of the SEC case and the alleged involvement of certain members. It had been a physically exhausting last week of the regular session and four or five days of the special session. And so the prevailing mood was to do what had to be done in order to quit and go home.

Q Do you know what the deviation was under the old bill or old senatorial districts that were for the '68 and '70 elections?

A I'm, again, I'm going completely on recollection, but my recollection is, based on the 1960 census figures, it was about eight per cent.

Q I believe I said the old senate districts; I meant the congressional districts.

A Well, I understood your question to be congressional. I think it was about eight per cent, but I—I could be wrong about that.

Q Senate Bill 1 as finally passed out

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carries a little over four per cent deviation; isn't that correct?

A Yes, my understanding that it is.

Q At the time, that late Friday afternoon when the final vote was taken, or Friday morning, as the case may be, would it have been possible to ring in the last minute a bill that carried absolute equality of districts and have it passed out of the Legislature?

A Well, as you know, you can't amend a conference committee report. So technically, the answer to to your question is, no, it couldn't have been done, because you can't amend a conference committee report on the floor.

Q I understand.

A I—I do think that if the leadership of both the House and the Senate would have required the conferees to continue to meet and if they had come up with a plan of less population, that it could have been passed, yes. I think there were better plans rejected than were passed on the question of population.

Q Was the House Bill 782 a better bill in your opinion?

A As far as population variation was

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concerned, it was. It had other defects, in my view, however.

Q Defects which made it impossible to pass out?

A Yes, considering the make-up of the Senate and the ambitions of various people and the pairing of incumbents.

Q What in your experience is the effect of taking a bill which totally redistricts the state and change one area in it; what is the effect of that?

A Well, if it's in an urban area, what you have got to do is to balance however many census tracts

you take away from District A and compensate for that in District B with a certain number of other census tracts. In the rural areas, whatever number of counties you take away from one district, you have got to add on to another one somewhere. It's—in the rural areas it's kind of like the domino theory, really. That's not as much true in the urban areas, because you're dealing with smaller geographical units of more densely populated area.

Q In other words, it does have sort of a domino effect if you go around changing things?

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A Especially in the rural areas, yes. You can—you can pick up as much population in one census tract in Dallas County as you can get from ten counties in West Texas.

Q One final question and I'll quit this. Do you think Senate Bill 1 represented in any manner a good faith effort on the part of the legislators to come up with an acceptable bill?

A Well, I'm sure that—that the people who voted for it voted for it in good faith. I don't—I don't question their good faith at all. I—I voted against it in good faith and I think those who voted against it voted against it in good faith, because, well, for various reasons. I thought a better plan could be devised. I thought it violated the—the guidelines of the Supreme Court and the other courts that had laid down as to, particularly, respecting the concept, as compact and contiguous as possible and community of interests. I'm sure that those who favored the bill did so in absolute good faith. I don't question their sincerity for a minute.

MR. QUICK: That's all.

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REDIRECT EXAMINATION

BY MR. FISCHMAN:

Q I would like to take things in inverse order. The last question Mr. Quick asked you was do you think that they made a good faith effort. I think your answer is, undoubtedly, true. I don't mean to be testifying for the record, but I'm trying to lay a predicate for my question. But I feel that that's a little bit different proposition than what the question called for. I don't think, in other words, that there was any kind of sinister legislative plot to disenfranchise the people of the state of Texas, which, I think, is what your answer would tend to agree with me on. But what we're trying to get at is this: Good faith effort, you admitted in your testimony that the, both houses of the Legislature knew, the conference committee knew, that the presiding officers of both chambers knew that a bill had been passed that had less of a deviation than the bill that was finally reported out. Everybody was in a hurry to get home. Whether that's justifiable or not, it, nonetheless, is the case. The premises on which the bill was passed, protecting incumbents, carving out seats for senators versus carving out

(P. 75)

seats for members of the House, do these things to your way of thinking represent a good faith effort to draw a bill that's as compact, contiguous and numerically equal as practicable?

A You have asked an involved, complicated question, so I'm going to have to give an involved and complicated answer. I, personally, don't think that the question of incumbency is a legitimate, valid consideration in where you draw the lines. I think that the only things that ought to enter into redistricting are those constitutional guidelines that the Supreme Court of the United States and the other courts have held to be required. I think that a better bill could have

been passed and if the Legislature had stayed in session longer, would have been passed. To the extent that the bill may violate some constitutional guideline, I wouldn't ascribe evil motive to an individual who voted for it. It would merely be violating a—a constitutional guideline in which I don't think intent is an element. At the same time, I—I bear no ill will or malice toward any member of the Legislature who votes differently than I do on this or any other question. And the point I was trying to make in

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answer to Mr. Quick's question was I think everyone conscientiously voted his own conscience on the matter. But his conscience may conflict with a constitutional guideline, whether he intends it or not.

Q I think that was precisely the distinction I was trying to make and I think you have answered the question. As I understand it, Senator, and you know more about the law in this area than I would ever pretend to know, good faith is, in light of the Kirkpatrick case, considered pretty much a word of art, is it not?

A Yes, I think so.

Q And encompasses more than malefides or intent or motive; is that correct?

A Yes, I think so.

Q And the answer that you gave to the question propounded by Mr. Quick appeared to me to be directed more to this latter facet, that is, the intent or motive, rather than to the question using the term good faith as a word of art.

A I tried to answer the question as—as I—and perhaps I misunderstood Mr. Quick's question. I understood it to be as to good faith of the members of the Legislature in voting for

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the conference committee report on Senate Bill 1. And

it was in that context that I answered the question. I think each member voted his conscience. And if his conscience, it turns out, is in conflict with some constitutional guideline, he didn't, I don't think, mean to—to say that his conscience was superior to a constitutional guideline. I think each member voted what he considered in his conscience to be right and proper.

Q Senator, we may have already confused the record hopelessly on this issue, but I'm going to approach it one more way. Now, if you can make a distinction between the Legislature and the legislators, (now), can you say that the Legislature made a good faith effort, considering that as a term of art under the Kirkpatrick case, to draw a bill that was as compact, contiguous and numerically equal as practicable?

A No, I don't.

Q All right. (Let me approach it a different way.) Representative Jones in his deposition outlined the procedure for drawing, sitting down with a grease pencil and a plastic overlay, and drawing of the congressional lines. And he says that the trick to it is that you have

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got to go in a circle and come back eventually to the place where you start. Now, you have indicated a different procedure, that is, start in the corners and work toward the middle and work out from the urban areas. Can you analyze for us the merits of one approach over another?

A Well, I think my approach is better than the other approach because of the way the population is situated in Texas and because I think, as I read the cases, the courts require that you do recognize the compact and contiguous requirement and the community of interests requirement, which are best served

by starting from the population centers and working out into the rural areas, rather than working from the rural areas into the urban areas. And because of where the mass of population is in Texas, there's nothing inconsistent with that, in starting at the extreme corners of the state and working inward.

Q In so doing do you work strictly from population or do you have to take into account the county lines?

A I think, as I read the case, that you work strictly on population. I understand the courts to say that there's no such thing as

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de minimis population variation in redistricting.

MR. FISCHMAN: Off the record just a second.

(Off-the-record discussion.)

DIRECT EXAMINATION

BY MR. ROSENBERG:

Q Senator Mauzy, on cross-examination Mr. Quick asked you about the difficulties in drawing a constitutional redistricting plan when one looked at the extreme corners of the state. You discussed, then, Districts Sixteen and Fifteen as examples; Sixteen being on the western edge of the state in El Paso, Fifteen being in the southern edge of the state going north. As—as in terms of defining a district as numerically equal as practicable, would there be any problem, even starting at the extremes, if one were not concerned with county lines?

A No, I don't think so. If you're concerned strictly with population, it's purely a question of proceeding in whatever direction you must proceed until you get to that number.

MR. ROSENBERG: Thank you.

* * *

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DAN WEISER, DONALD COLEMAN,
JOHN L. EDWARDS, HUGH ELLIOTT,
JOHN W. FLETCHER, JOHN R. KARR,
JOYCE V. KARR, BENJAMIN NEWCOMB,
NORMA PALMER, MARVIN ZIMET,
Plaintiffs

No. CA-3-5202-D

vs.

HONORABLE BOB BULLOCK,
SECRETARY OF THE STATE,
OF THE STATE OF TEXAS

BE IT REMEMBERED that on the 21st day of January, 1972, at 10:00 o'clock A. M., the following proceedings were had in the above styled and numbered cause before Honorable JOE INGRAHAM, Fifth Circuit, Honorable W. M. TAYLOR, JR.; and Honorable ROBERT M. HILL, United States District Judge in and for the Northern District of Texas, held in session in the Dallas Division in Dallas, Dallas County, Texas:

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(P. 10)

PLAINTIFFS' OPENING ARGUMENT

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(P. 14)

* * *

If the discrimination is on the basis of race, Plaintiffs have the burden to show it does, everything else equal, but if it gets down to equality of districts, I don't believe that stands for that proposition. We have the burden shifted.

JUDGE INGRAHAM: Well, I didn't know we had a racial case here. I thought this was a case on the population, distribution of population.

MR. ROSENBERG: That is correct, Your Honor; this is not a race case. If it were I would say that the burden does fall on Plaintiff to show the disparity.

JUDGE INGRAHAM: Very well.

MR. ROSENBERG: We had it in our pleadings initially and took it out. We do not—

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(P. 21)

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The House of Representatives passed a bill called H.B. 782. Its per cent of deviation error was 2.5 per cent. It went to the Senate.

The senators didn't like it, because this green—this right here, what they call the backward C (indicating), that existed and that was political gerrymandering.

That was going to let Representative Haynes go to congress, instead of Senator Wilson.

JUDGE INGRAHAM: That is speculation, too, isn't it?

MR. ROSENBERG: Well, we have got some testimony about that, Your Honor, and the Court can consider

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it or not.

JUDGE INGRAHAM: Do you mean that was in their mind?

MR. ROSENBERG: Oh, yes, sir.

JUDGE INGRAHAM: That was the purpose for them drafting what they did draft?

MR. ROSENBERG: Oh, yes.

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Let them draw a plan the way they are going to draw it, but the last thing they have to do is to subvert those desires and just adjust it for numerical equality.

Our Plan B, the plan in red on your small maps we provided you, is just that.

We took Senate Bill 1, with the 4.1 per cent variance, nineteen thousand and some odd people, and adjusted some lines and wound up with one-tenth of one per cent off, less than 700 people apart.

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* * *

With Texas' history, I submit that the Court should order our Plan B implemented, which takes, in effect, what they want it to do, except that we have adjusted it to get the numbers down, to be concerned about numerical equality, down to less than one-tenth of one per cent.

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That we retain jurisdiction, that we say, "Legislature, enact a better one or as good a one, and you do it"—fine.

But, at least, we will have the opportunity to go to the polls next November on a constitutional plan.

Thank you.

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MR. FISCHMAN: Well, frankly, I don't know, Your Honor, but I think if Congressman Mahon is that good a congressman, he could get re-elected, no matter what the shape of that district was. He might have trouble getting re-elected in the Barbara Jordan district down here, but—

JUDGE INGRAHAM: Particularly, if he was running against her.

JUDGE HILL: She is not a congressman, is she?

MR. FISCHMAN: No, she is an announced candidate.

JUDGE HILL: Oh, I see.

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JUDGE HILL: Is this the high water mark or design of a district for a particular individual—we are talking about East Texas primarily, and I was wondering.

MR. FISCHMAN: Well, I think it—I am really not that politically astute, Your Honor, to tell what problems have been created.

I would submit that possibly the Fifth District here in Dallas, Congressman Cabell's district, might fall into that category, too.

Reverend Holmes testified extensively about that,

(P. 38)

as did Senator Mauzy, although they don't quite end up at the same place on the question.

There is no doubt about it that Congressman Cabell's district was over-populated, and it needed to be cut down, and they just very conveniently removed ten black precincts from his district that he had had

trouble with in every primary since he had been running.

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JUDGE HILL: Are you suggesting that we adopt Plan B on a temporary basis—?

MR. FISCHMAN: That is precisely—

JUDGE HILL: (Continuing)—And keep the case under advisement?

MR. FISCHMAN: I feel this, Your Honor—

The Court expressed concern in the pre-trial conference about filing deadlines, and that was a matter of raising the question; nothing was really discussed or decided.

But, we submit to the Court that the Court should declare S.B. 1 unconstitutional, and therefore void and enjoin its enforcement.

We suggest, number two, that the Court enter appropriate orders requiring the primary and general elections to be held under Plan B, which is outlined in red on our map.

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DEFENDANTS' ARGUMENT

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* * *

There was quite a fight over whether Representative Haynes or Senator Wilson should have a district constructed for their purposes, and whether or not Representative Haynes should be benefited by the gerrymander as it is drawn presently (indicating.)

Representative Haynes and Senator Wilson are

(P. 44)

both in the same congressional district, they can both

run for congress, and the people can choose which of them they desire.

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JUDGE INGRAHAM: I think I can understand cutting Ector County, but I see someone's plan here with a line running through the middle of Jeff Davis County.

Why would anyone want to divide Jeff Davis? There is not a handful of people there. It is populated largely by jackrabbits and billy goats.

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PLAINTIFFS' CLOSING ARGUMENT

* * *

If these extraneous and, I submit, impermissible factors had not been the predominant feature of this piece of legislature, (sic) if the Legislature had not at the taxpayers' expense made two trips to Washington, and then they would have come up with a bill wtih the population as the sole test—not the sole test, but if population was the primary test then these other factors were secondary, then it would have come up with this (indicating).

The blue lines on this map represent S.B. 1.

The red lines here represent our Plan B, which

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the Court can see takes almost exactly the same thing—it doesn't pit any more incumbents against another; it leaves Mr. Wilson free to run against Mr. Haynes, or whoever wants to run, but yet is less than 700 people from top to bottom, as opposed to 19,000.

If, in fact, the population was the primary concern of the Texas Legislature enacting S.B. 1, they would

have come up with the red map instead of the blue one.

Now, I want to say, mention a word or two about this business that Mr. McDaniel points out, and my partner alluded to in his early part of his argument.

It is not really a bad plan, if you destroy all of the bad features.

As Senator Word testified, they couldn't apply population—they couldn't apply population equalities; they couldn't do anything; they got boxed in in these areas (indicating); they couldn't do anything.

But the reason—the reason, as set forth in Page 35 of our appendix is, they didn't want to cut across county lines.

Well, that argument is answered very simply; they did it here in Ector County; there are other

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county lines cut on this map. Where they had to they did it.

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(P. 73)

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Now, I think this: I think the sum total of the state's argument is that this is the best bill they could get through the legislature.

This reasoning is wholly rejected—

JUDGE INGRAHAM: I think that is sad. I agree it was probably the best you could do.

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(P. 74)

* * *

If they had started with the right approach; if they had started with the numbers and stayed with it, they would have come out with our Plan B, and yet

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accomplish virtually the same thing as they set out to accomplish.

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(P. 78)

* * *

JUDGE INGRAHAM: Well, if we did that, how soon could it be implemented? And, if we did that, that leads me to the next question:

What can we do? Do we have any authority to redistrict the State of Texas?

MR. FISCHMAN: I think there is ample authority, Your Honor, under many, many cases.

The most recent case, *Bussey versus The Governor of Louisiana*, a congressional redistricting case, is as yet unreported. And there are a number of these cases.

I think the Court's remedies—of course, the Court's powers and remedies in these cases is virtutally wide open.

But, in that case, the court referred the case to a Special Master, and he took all sorts of evidence on what would be an appropriate plan. He made a report and the court heard the report, heard all

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of the exceptions to the report, and then said, "The way the Master drew the plan is the way it is going to be."

JUDGE INGRAHAM: I wouldn't want to employ a master. That would be just one more idea, one more plan, one more than we have.

MR. FISCHMAN: We haven't asked for it, but we suggest, by way of remedy of this Court, is that our Plan B, which the details all of which are admitted in the pleadings and stipulations, can be implemented, and, as we say, is almost identical to the plan that was enacted by the legislature, but it is less than 700 people from top to bottom, rather than 20,000.

That plan could be ordered by this Court, unless the legislature enacts a better plan.

* * *

(P. 80)

So far as the matter of politics, that would be solved, too, because every candidate would have a constitutional bill, a district apportionment act to run under, and he could file in the district proposed by our Plan B.

* * *

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

71-1623

FILED
JUN 14 1972
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1971

NO.

BOB BULLOCK, SECRETARY OF STATE OF TEXAS,

Appellant

v.

DAN WEISER, DONALD COLEMAN, JOHN L. EDWARDS, HUGH ELLIOTT, JOHN W. FLETCHER, JOHN R. KARR, JOYCE V. KARR, BENJAMIN NEWCOMB, NORMA PALMER, AND MARVIN ZIMET,

Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

JURISDICTIONAL STATEMENT

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III. *Whatever the Court's disposition of the preceding points, this judgment evidently must be reversed, since there was no conceivable warrant for the Court's adopting Plan C as ". . . the plan of this Court for the congressional districts of the State of Texas . . .," and the procedure leading to that adoption was grossly defective.* 23

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1971

NO.

BOB BULLOCK, SECRETARY OF STATE OF TEXAS,

Appellant

v.

DAN WEISER, DONALD COLEMAN, JOHN L. EDWARDS, HUGH ELLIOTT, JOHN W. FLETCHER, JOHN R. KARR, JOYCE V. KARR, BENJAMIN NEWCOMB, NORMA PALMER, AND MARVIN ZIMET,

Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

JURISDICTIONAL STATEMENT

Appellant appeals from the judgment of the United States District Court for the Northern District of Texas, Dallas Division, entered on January 22, 1972, enjoining appellant from taking steps toward the conduct of an election of Members of Congress under the districting plan set up by the Texas Legislature, and ordering into effect, in its stead, a districting Plan adopted by the District Court. Appellant submits this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal, and that substantial federal questions are presented.

OPINION BELOW

The opinion and orders of the District Court for the Northern District of Texas are not yet reported. The opinion and orders are attached hereto as Appendix A. The order of this Court staying the said judgment, on application by appellant to Mr. Justice Powell, by him referred to the Court, is reported at — U.S. —, 92 S. Ct. 750 (January 27, 1972). This Court's denial of the motions of appellees to advance and expedite and to dispense with printing is reported at — U. S. —, 92 S. Ct. 928 (February 22, 1972).

JURISDICTION

The action below was brought to enjoin the enforcement of a statute of the State of Texas, Senate Bill One, Tex. Acts, 62d Leg., 1st C. S. 1971, ch. 12, p. 38, and jurisdiction of the three-judge District Court below was invoked under Title 28 of the United States Code, Sections 1343 and 2281. The jurisdiction of this Court to review on appeal the judgment of the District Court is founded on 28 United States Code, Sections 1253 and 2101(b).

QUESTIONS PRESENTED

1. Whether the Congressional districting plan adopted by the Texas Legislature was a permissible one within the standards hitherto set by this Court, and hence whether the action of the court below, in overturning the legislative plan, properly interpreted those standards.

2. Whether the standards for Congressional districting hitherto set or adumbrated by the decisions of this Court, particularly in the case of *Kirkpatrick v. Preisler,* 394 U.S. 526 (1969), ought to be reconsidered and revised.

3. Whether the court below (even assuming a negative answer to each of the above questions) acted improperly and without warrant of law in ordering into effect the districting plan it incorporated into its opinion "as the plan of this Court for the congressional districts of the State of Texas . . ."

STATUTE INVOLVED

The statute involved is Senate Bill One, Tex. Acts, 62d Leg., 1st C. S., 1971, ch. 12, p. 38, a copy of which, with map and table of variations, is attached hereto as Appendix B.

STATEMENT

On June 17, 1971, the Governor of Texas signed into law Senate Bill One (Tex. Acts, 62d Leg., 1st C. S., ch. 12, p. 38, hereinafter referred to as S.B.1) a measure dividing the State of Texas into twenty-four Congressional Districts for the ensuing decennium. Summarily, this Act allowed population variations (from the 1970 census count) of +2.43% for the 13th District, +2.38% for the 16th District, +2.34% for the 19th District, and —1.7% for the 15th District. None of the other variations are significantly over 1%, ranging rather evenly from +.01% to —1.14%, with the majority of all twenty-four variations, up or down, below .5%.

The widest up-and-down variation is 4.1%, between the 13th and the 15th Districts, putting their 1970 census populations into a ratio of 1:1.041.

On October 19, 1971, plaintiff-appellees (residents of the 6th, 13th, 16th and 19th Districts) filed their complaint against the appellant herein, Secretary of State of Texas and chief election official thereof, alleging violation of their rights under Article I of the Constitution of the United States, and the Equal Pro-

tection Clause of the Fourteenth Amendment. They asked an injunction against holding of any election under S.B.1 and an order directing the Legislature to enact a new bill, and in the event this was not done, that a plan submitted by them and appended to their complaint be ordered into effect, or, in the alternative, that an at-large election be ordered. The plan then submitted is hereinafter referred to as Plan B; a map and table of variations in this Plan are appended hereto as Appendix C.

Appellant's answer in effect denied violation of appellees' rights by S.B.1. A three-judge district court was convened to hear the case. On January 22, 1972, Van Henry Archer, designated in his complaint-in-intervention as "duly elected Chairman of the Bexar County Republican Party," and others, filed a complaint-in-intervention, joining appellees in their general position, but proposing another Plan, containing deviations up to 1.08%

On January 10, 1972, plaintiffs filed an amended complaint, substantially similar to their original complaint, except that another plan, hereinafter referred to as Plan C, was tendered the court as a remedial possibility. A map and variations for Plan C are appended hereto as Appendix D.

This Plan C provided for population variances *greater* than Plan B in 14 Districts, equal to Plan B in 8 Districts, and less than Plan B in only 2 Districts, in one of these by the amount of four persons. The maximum variation of Plan C is almost exactly five times the maximum variation in Plan B. (13th District).

On January 22, 1972, twelve days after the filing of appellees' amended complaint (wherein Plan C was

first presented), the court below, in a three-page *per curiam* opinion, declared S.B.1 unconstitutional, enjoined elections under it, and adopted appellees' Plan C as ". . . the plan of this Court for the congressional districts of the State of Texas. . . ." The court's entire rationale for the adoption of Plan C was that it was "significantly more compact and contiguous than" the other Plans. (All Districts in all the Plans are actually contiguous.)

The District Court's decree provided for reconsideration if the Legislature devised a new plan, but the Governor refused to call a special session.

This Court granted a stay of this judgment, on January 27, 1972. (See 92 S. Ct. 750.)

There are no "findings of fact" in the opinion of the court below. Evidence taken in the cause consisted in depositions of several legislative members, two clerks, and the Lieutenant Governor, concerning the process leading to the passage of S.B.1. In the absence of "findings of fact" to which specific comment might be addressed, the upshot of this testimony is difficult to summarize without argumentativeness: appellant finds in it no probative evidence of impropriety or bad faith, and must necessarily leave to appellees the pointing-out of such evidence, if in their view it exists. (The negative answer to the "good-faith" question in the deposition of Oscar Mauzy was preceded by a long philosophic discussion of the meaning of the term, a discussion which appellees' counsel himself said "confused the record hopelessly," and in any case was an answer to a question which mixed population equality with compactness and contiguity—*not* constitutional requirements. Mauzy Deposition, pp. 74-77. This parenthesis may perhaps serve to illustrate why full analysis

of this Record is inappropriate at this time.) It is fair to say, however, that the testimony does show a concern, on the part of those legislators principally active in the apportionment process, for the maintenance where possible of constituency-Congressman relations and of seniority deemed valuable to the State (see, e.g., Deposition of Senator J. P. Word, pp. 27-29), though appellant finds no distinct evidence of any causal connection between this concern and any of the small variations from population equality in S.B.1; nor is there any evidence that this concern had a partisan bias. (So far as appellant can make out, Senator Word's testimony that no such bias existed stands unimpeached and unrebutted; see Deposition of Senator J. P. Word, p. 28.) There is evidence that some legislators took into account a belief that the relative populousness of West Texas would probably continue to decline (*ib.* p. 37); the three districts showing a disparity of more than 2% are in that section.

There is nothing in the Record bearing in any way on the practicality, prudence or wisdom of any of the Plans submitted as alternatives to S.B.1, including the Plan (Plan C) adopted by the court below.

THE QUESTIONS ARE SUBSTANTIAL

I.

Even a following of Kirkpatrick v. Preisler, 394 U.S. 526 (1969), need not result in condemnation of the Legislature's districting plan now at bar.

Kirkpatrick v. Preisler, 394 U.S. 526 (1969) held on its own facts, that Article I of the Constitution permits, in Congressional districting, ". . . only the limited population variances which are unavoidable despite a *good faith effort* to achieve absolute equality,

or for which justification is shown." 394 U.S. at 531. [Emphasis supplied] While appellant's principal contention will be (II, *infra*) that this standard, as given concreteness by the *Kirkpatrick* facts, is wrong as a matter of substantive law, and that the *Kirkpatrick* position ought accordingly to be receded from by a short distance, appellant nevertheless contends that the instant case, on its own facts, satisfies even the stringent *Kirkpatrick* standard, as the latter should properly be interpreted if it is to stand.

A "good faith" attempt at reaching equality satisfies the *Kirkpatrick* rule as quoted above. The term "good faith" is one of the most Protean in law, changing shape from context to context, and the *Kirkpatrick* opinion does not attempt a general definition in this context. Appellant suggests that "good faith" here must mean such "good faith" as can meaningfully be predicated not of a single individual, working with census blocks and a computer, and with nothing but numbers on his mind, but of three separate political authorities (in Texas, a House of 150 members, a Senate of 31 members, and the Governor) working in a highly intricate and complicated coaction, against time, for compromise amongst many legitimate claims. The rejection of this definition amounts to a rejection in principle of districting by the Legislature, and insures that much districting will have to be done by the courts. Indeed, all of it would have to be performed by the courts, except where by lucky chance the legislative process, in its normal working, produced exact arithmetical equality.

The *Kirkpatrick* opinion (394 U.S. at 531-2) gave definite reasons, derived from the *Kirkpatrick* Record and lower court findings, for concluding that "good faith," in this one and only realistic sense, was absent

in the Missouri process. The most important thing about this recital of reasons is that its being made at all forbids the conclusion that *Kirkpatrick* sets up a *presumption* of "bad faith" in the legislative process on *nothing more* than a showing of any palpable variation from equality; the Court in *Kirkpatrick* felt it needful to point to particulars in the Missouri process which justified rejection of the contention that a good-faith effort had been made. None of these particulars can be asserted of the process followed by Texas in this case, first because there are no "findings of fact" in the judgment here under review, and secondly because the whole testimonial Record paints a picture of an honest attempt to apportion the State properly. Unless, therefore, there is *now* to be erected the above-mentioned presumption of "bad faith" on the part of the Legislature and Governor of a State, on nothing more than a showing of palpable though quite small variation, Senate Bill One must be sustained. even under *Kirkpatrick,* for *Kirkpatrick* itself need not be read to commit this Court to that presumption.

A careful reading of the paragraph in *Kirkpatrick* that is crucial here (394 U.S. 531-2) leaves the impression that great weight lies in the sentence declaring it "simply inconceivable that population disparities of the *magnitude* found in the Missouri plan were unavoidable." (394 U.S. at 532) [Emphasis supplied] The "disparities" in the present case are of a definitely lesser magnitude than those in *Kirkpatrick* (4.1% up and down as opposed to 5.97% up and down); the *Kirkpatrick* variation was thus nearly half again as large as the maximum up-and-down variation here. Only experience with the political process, as worked by men of unimpeached good faith, can show what is "conceivable" within it; it is submitted that the whole

Record in this case illustrates and exhibits that it is entirely "conceivable" that population variations of the magnitude found in Senate Bill One can result, despite good-faith effort within that complicated process of consultation and compromise which is the process necessarily to be followed if districting is to stay in the hands of the Legislatures. Even a bull's-eye has some thickness; a hit toward the edge of it does not imply lack of good-faith effort to hit the center.

If "good faith," in the above sense, be allowed the Legislature, then even under *Kirkpatrick* no "justification" is necessary. However, assuming the necessity of justification, the court below has in one summary sentence rejected all possible justifications, without specifying their nature. The working of the legislative process is such that *official* "justifications" commonly do not emerge from it, and have therefore rarely been looked for with respect to legislation in general. On this Record one might conjecture them (if needed) to be twofold: (1) The anticipation of further lessening in population in West Texas; (2) Attention to the objective of maintaining mutually satisfactory Congressman-constituency relations, and maintenance of the State's accrued Congressional seniority (See, e.g., references to the Word deposition, *supra*), though it must be repeated that this factor is not shown, so far as appellant can make out, to have been causally connected with any deviation. On the whole Record, the worst charge that could possibly be sustained is that these motives may have produced, directly or indirectly, these small deviations.

The full upholding of these "justifications" cannot be undertaken in this Jurisdictional Statement. But appellant submits that their full consideration, as possible "justifications" if these be needed, is requisite,

before this Court affirm so serious an incursion into State political structure as has occurred in this case, on such a trivial and conjectural showing of "debasement" of voting power.

Finally, and generally, the intervening case of *Abate v. Mundt,* 403 U.S. 182 (1971), approving a 12% deviation from equality in a local-government plan, requires consideration of the application to the instant case of that qualification to the *Kirkpatrick* standard stated in *Kirkpatrick* itself:

> "The extent to which equality may practicably be achieved may differ from State to State and from district to district." *Kirkpatrick v. Preisler,* 394 U.S. 526, 530 (1969).

Nor is there any rational ground for the total exclusion of Congressional districting from the never-repudiated caution in *Reynolds v. Sims:*

> "What is marginally permissible in one State may be unsatisfactory in another, depending on the particular circumstances of the case. *Developing a body of doctrine on a case-by-case basis* appears to us to provide the most satisfactory means of arriving at detailed constitutional requirements in the area of state legislative apportionment." *Reynolds v. Sims,* 377 U.S. 533, 578 (1964). [Emphasis supplied]

At a minimum, the State of Texas is entitled to a full examination of these questions (whether as to "good faith" or as to "justification") in this Court, before its carefully considered plan for its own Congressional representation be rejected on mere citation of *Kirkpatrick.*

II.

The strict standard of Kirkpatrick v. Preisler ought to be reconsidered and revised. It will be ap-

pellant's contention that that standard is not warranted by law, and is (as the instant case balefully illustrates) inevitably productive of a highly undesirable involvement of the judiciary in the details of the apportionment process. Appellant will submit that the warrantable substantive law of Congressional apportionment contains a term of reasonable latitude, within which the legislative plan at bar evidently falls, and that this Court might appropriately set up, as a vitally needed remedial convenience, a numerical standard of permissible deviation from equality of census figures.

Appellant's contention here will *not* be that a *de minimis* standard ought to be indulged for dealing with established violation of constitutional rights. It will rather be that, on full reconsideration, the *substantive constitutional law* governing districting for Congress ought to be held to be such that the plaintiff who shows district variations of a few percentage points has not stated or proved any case whatever of violation of his constitutional rights. (This position does not, of course, imply that quite independent constitutional norms, such as the command against racial discrimination, may not in a given case come into play.)

Appellant's contentions here will be, broadly, twofold: (1) The rationale of *Wesberry v. Sanders,* 376 U.S. 1 (1964), the leading and rationally definitory case on the subject of Congressional districting, reaches to support of a doctrine of approximate and reasonable equality, but not to support of a doctrine of close arithmetical equality; and (2) that the nature of the census figures, upon which alone the doctrine of close arithmetical equality can operate, for multiple reasons makes that doctrine meaningless as a protection against *dilution or debasement of the vote,* the evil

sought to be prevented in the apportionment decisions. It cannot be that good law commands an idle thing, unrelated to the value sought.

The judgment in *Wesberry v. Sanders, supra,* rests squarely and exclusively upon the wording and history of Article I of the Constitution of the United States. The history adduced in the opinion consists exclusively of utterances contemporaneous with the adoption of that Article.

It may legitimately be questioned, with great respect, whether the Court did not on that occasion make a somewhat simpler thing of the implications of the adduced history than was warranted. It is very clear, for example, that the Convention never fully decided whether it was using population, as such and on its own merits, as a basis for apportionment, or whether, on the other hand, it was using population as a parameter for estimating the respective wealth of the States, conceived by some to be the proper measure of representation. See, e.g., II Farrand, RECORDS 541-542 (rev. ed. 1937); see also THE FEDERALIST No. 54. Even an early draft of the Committee of Style tied population to "direct taxation," and only by cross-reference to representation. II Farrand, *ib.*, 565 *et seq.* The drawing on London and Old Sarum as illustrative of the evil sought to be prevented by proportionate representation indicates focus of attention on differences of a very high order of magnitude, rather than on exact equality; see *Wesberry v. Sanders,* 376 U.S. at 14-15. Leaving to the several States the power to fix voting qualifications, which varied enormously (see Chute, THE FIRST LIBERTY (1969), *passim*) and inclusion of three-fifths of the voteless and voiceless slaves in the population base (a necessary compromise) perhaps combine with the foregoing considerations to suggest that it is not

the earliest history alone, but the whole constitutional history of the United States (including the Thirteenth and Fifteenth Amendments, Section Two of the Fourteenth Amendment, the development of universal suffrage and less easily defined changes in attitude) to which recourse must be had to establish approximate equality of congressional districts as a warrantable principle of the structure of the national government, inviolable by the States. Nevertheless, appellant completely accepts this principle. The point here made is that this approximation to equality, *not* an absolute arithmetical equality, is all that can be warranted by the history adduced in *Wesberry v. Sanders,* and all, therefore, that the theory of that leading case ought to have been held to require—and that there is no other history, and no consideration relevant to law, conducing to the establishment of the strict requirement of *Kirkpatrick.*

Plainly, the center of gravity of the discussion of equal representation, in the Constitutional Convention, was proportional representation of the *States;* any remarks about districting were on the far periphery. Districting is not even a constitutional requirement. The form of the inference from the history adduced in *Wesberry* must then be that equality *among districts* is a requirement closely connected with the requirement of proportionate representation *of the States* in the House.

It is absolutely crucial, therefore (unless the inference is to rise higher than its source), to ask what the Framers meant by "equal numbers of representatives for equal numbers of people" (see *Wesberry v. Sanders,* 376 U.S. 1, 10-11 (1964)) *in the state-representation context.* Did they mean exact arithmetical equal-

ity, or some very tight approximation thereto? Or did they mean a reasonable approximation to equality?

The face of the text of Article I goes far toward showing they meant the latter. The first representation set up (Article I, §2) was *ad interim* and based on guesses, but it cannot have been supposed by anyone that any more than a rough approximation to equality of constituent numbers would be attained by an apportionment which, for example, gave three Congressmen each to New Hampshire and Georgia. Only the rarest and most improbable accident could produce anything more than approximate equality in such a scheme, yet there is no record of any drive toward more exact arithmetical equality, or of any dissatisfaction with its general non-attainment. (The size of the House of Representatives was much discussed in the Convention, but (so far as appellant can discover) the point was never made that a larger House would make possible a closer approximation to arithmetical equality of constituencies.) The words "one for every thirty thousand," in the same Section, scarcely suggest much interest in precise accuracy. The provision for there being at least one representative for each State, however small, tends in the same direction, as does the important allowance of three-fifths of the slaves in the count.

It is interesting to go on and see what the Second Congress did in apportioning on the First Census of 1790, for this tells much as to what passed for a satisfactory approximation to equality in the minds on whose intent *Wesberry v. Sanders* solely rests. The following short table tells the whole story:

State	Population Adjusted to 3/5 Formula	Number of Representatives	Number of Persons per Representative
Vermont	85,532.6	2	42,766.3
N. Hampshire	141,821.8	4	35,455.4
Maine			
Massachusetts	475,327.0	14	33,951.9
Rhode Island	68,445.8	2	34,222.9
Connecticut	236,840.4	7	33,834.3
New York	331,590.4	10	33,159.0
New Jersey	179,569.8	5	35,913.9
Pennsylvania	432,878.2	13	33,298.3
Delaware	55,539.2	1	55,539.2
Maryland	278,513.6	8	34,814.2
Virginia	630,559.2	19	33,187.3
Kentucky	68,705.0	2	34,352.5
N. Carolina	353,522.2	10	35,352.2
S. Carolina	206,235.4	6	34,372.5
Georgia	70,842.4	2	35,421.2
Total	3,615,923.0	105	34,437.4

(Calculations show a percentage range of deviation from national "ideal" district of 0.19% to 61.28%, with a median deviation (Georgia) of 2.86% and an average deviation of 7.61%.)

(Sources: Stewart, YOUR 1970 CENSUS 5 (1969); 1st Session, 2d Congress, C.23, 1 Stat. 253.)

Clearly, what is happening here is the roughest approximation to equality. Each state is getting a representative for each full 33,000, with no allowance for fractions. Yet there is no record of any dissatisfaction with this method, productive as it was of the disparities shown.

Appellant emphatically is not rearguing the case of *Wesberry v. Sanders*. That judgment was right, on any view, for the population disparity was in the nature of two or three to one. The history brought forward in *Wesberry* fully justified the conclusion that the Framers would have regarded such districting as abusive. But the history behind *Wesberry* (and that history, being *Wesberry's* sole ground, necessarily bounds and defines the substantive law of *Wesberry*) offers no support

whatever to a substantive requirement, conclusive or presumptive, of near-exact arithmetical equality, and (insofar as appellant can at this stage of the case ascertain) strongly supports the thesis that the Framers would have dismissed as utterly trivial the inequalities shown in this case.

There is no subsequent history supporting a contrary view. It is a striking fact, which ought to cast grave doubt on the *Kirkpatrick* theory of arithmetical exactness, that quite wide latitude *between* the States is now and always has been tolerated without any feeling of impropriety, as a natural consequence of the working-out of the Article I scheme. As an example, using the 1970 Census, Oklahoma (with six Congressmen) has an "ideal" Congressional district of 426,542, while Connecticut (also with six Congressmen) has an "ideal" district of 505,370—a difference of some 79,000, or more than 16% variation up and down from the average "ideal district" of the two States taken together, which happens to be close to the overall national "ideal district" of 465,352. Much wider divergences appear: Idaho (two Congressmen) has an "ideal" district of 356,504; Maine (also with two Congressmen) has an "ideal" district of 496,832.

Appellant reproduces, in Appendix E hereto, a tabulation of the range of variation, amongst the States, from the national "ideal district," according to the 1970 Census. These variations are enormous, but, as among the States, calculation shows that the *average* deviation is 7.79%, while the *median* deviation is 4.75%. This means that the "dilution" complained of in the present case is far less than the "dilution" as to either the average or the median State, as against the national "ideal." Of course it is *possible* for intra-state districts to be made more equal than these figures suggest;

the question is not what is *possible* but what is *required* by rationally derived law. If the *requirement,* as *Wesberry v. Sanders* very plainly shows, is derived from the nature of the federal scheme, has there not occurred some departure from either logic or common sense, when a requirement of very strict intra-state equality is deduced from the intendment of a scheme which was never meant to bring about any more than approximate equality, and which today, without complaint or apology or feel of wrong, produces only approximate equality?

(Parenthetically, these figures, or some calculations upon them, might suggest a concrete percentage of permissible variation; see *infra,* at the conclusion of this point (II)).

The second branch of appellant's argument on this point rests on two propositions: (1) In *Wesberry v. Sanders,* as in other leading apportionment cases, it is the *dilution or debasement of the vote* that is complained of by the litigants and condemned by this Court. Yet (2) there is, to say the least, no such precise correlation between census figures and future voting population as to make exact equality in the former anything more than a rough and unreliable indication of equality in the latter. The litigant who alleges and proves a *small* district disparity in census population has therefore failed to allege facts which ground any inference of the dilution of the power of his vote. The stubborn facts are:

(1) That all census figures are somewhat inaccurate, and that there is a serious undercount of certain elements in the population.

(2) That population shifts or grows at quite substantially different rates within different sections of a State in any decennium.

(3) That there is a surprisingly wide variation in the ratio, as among sections, of eligible voters (citizens over 18) to total population.

(4) That numerous other factors stand in the way of any establishment of a very close correlation between census population and voting population: military personnel, student population, temporary residents, migratory workers, and so on.

As to the first of these points (since, though logically first, it is probably of the least numerical importance) it is perhaps sufficient, for purposes of this Jurisdictional Statement, to refer to the material in Mr. Justice Fortas's concurring opinion in *Kirkpatrick,* 394 U.S. at p. 539, fn. 3. See also Spiegelman, INTRODUCTION TO DEMOGRAPHY (1955), Chapter 3, *Errors in Census Statistics and Vital Statistics and Their Adjustments.* (The REPORT ON ACCURACY OF THE 1970 CENSUS ENUMERATION, *House Committee on Post Office and Civil Service, Subcommittee on Census and Statistics* (1970) is somewhat equivocal in its "Findings," particularly as to inner-city count (p. 37), though generally favorable, pending statistical analysis).

As to the second and much more important point, only a little illustrative material will here be given, to bolster at this stage a proposition which is probably in any case a matter of common knowledge. The following table shows differential percentages of growth in the decennium 1960-1970, in certain conurbations within the same State:

Hartford, Conn.	20.9%	
New Haven, Conn.	10.9%	
Bridgeport, Conn.	15.1%	
Houston, Texas		40.0%
San Antonio, Texas		20.7%
Beaumont-Port Arthur, Texas		3.3%

Columbus, Ohio	21.3%
Cleveland, Ohio	8.1%
San Jose, Calif.	65.9%
Anaheim, etc., Calif.	101.7%
San Francisco-Oakland, Calif.	17.4%

(Source: Statistical Abstract of the United States, 1971, pp. 19-20.

These data illustrate what appellant submits is generally known—that (owing to factors only in part predictable—see Spiegelman, *op. cit. supra,* 257) an apportionment at the beginning of any decennium may be, and often is, badly askew a few years later; even with respect to population. This uncertain variability over any decennium is great enough to have led to widespread demands for a mid-decade census—demands apparently supported by the Subcommittee responsible for the REPORT ON ACCURACY just referred to; see p. 45 thereof.)

As to the third point, which is absolutely crucial, a single illustration may here be given. According to figures taken from the 1960 census, the then Fifteenth Congressional District in Texas had a population containing 53.54% of persons 18 or over, while the Fourth Texas showed a figure of 67.48%—an enormous percentage difference which, in districts of equal population, would produce something like 25% more persons eligible to vote in one population than in another of the same size. These are only the extremes; the full range is reproduced in Appendix F hereto. There is no reason to think this phenomenon changes, or is not national. *Taken alone, it absolutely explodes the idea that small population variations are connected in any reliable way with dilution or debasement of the vote.* And we are here dealing with *facts,* which are not amenable to change by any number of judicial holdings.

As to the fourth point, the factors are random in incidence, but unquestionably exist. Only a few examples will be given. Aliens are not equally distributed; there may be sudden influxes, as to the Miami area from Cuba in the 'sixties; South Texas, it may be remarked, is subject to influxes of migrant labor. Military installations are unpredictable of establishment and dismantlement, and of unstable size. Student population may rise or fall; student preferences as between voting at school and at home are not predictable and are likely to veer *en masse*.

What this all adds up to is this: Census population figures in a district in 1970 are to some extent to be correlated with population or with number of eligible voters in that district in 1972 or in 1975. But the correlation is rough; it affords no basis for more than the merest conjecture that any voter is to any degree suffering dilution or debasement of his future vote, when all that is shown is a few percentage-point variations in 1970 census count between his district and another. The equality in voting power produced by insistence on nearly exactly arithmetical equality in census figures is a fiction; the unyielding facts forbid its ever being any more than that. The federal judicial power should not bite deep into State political structure just to protect a fiction. Substantive constitutional law does not guard fictitious interests.

Appellant desires once more strongly to emphasize that he is not contending for the institution of a *de minimis* rule in respect to a proven violation of constitutional right. He is rather saying that, on the warrantable law of *Wesberry v. Sanders,* and in the very nature of the facts on which legislatures and courts can operate, no constitutional violation at all is shown

when all that is shown is a few percentage-points variation up and down as among districts.

It follows, in appellant's view, that the strict rule of *Kirkpatrick v. Preisler* is substantively in error. If, however, that rule threatened no harm, then the doctrine of *stare decisis* might lead to the following of the case. It is appellant's contention that one need look no further than this Record to see that great harm threatens from the *Kirkpatrick* rule.

It is submitted that the words ". . . the plan of this Court for the congressional districts of the State of Texas . . ." are chilling words. We have gotten to a place no one wanted to get to, a place bewilderingly outside the bounds of sound distribution of function among the branches of government and the components of the Union. Commentators have pointed out—and it is a quite plausible conjecture—that we will often get to this point, under the *Kirkpatrick* rule. And we will get there in cases, like this, where harm to any identifiable individual or class is not so much trivial (though, at worst, it is that) as entirely conjectural. (For another sobering example of the sort of involvement the lower courts are getting into, see *67th Minnesota State Senate v. Beens*, — U.S. —, 92 S. Ct. 1477 (1972). As a matter of fact, consideration of point three, *infra*, illustrates the undesirable position into which the lower courts have been led by the *Kirkpatrick* doctrine.)

Districting by courts is evidently undesirable (quite aside from the abrasions produced and the addition to the judicial work-load) for the general reason that districting, whether or not population equality is observed, always and inevitably involves choices amongst a near-infinity of possibilities, choices which cannot be made according to law, because nothing in law or derivable from law assists in making them. Any doc-

trine leading to the referral of such choices to the courts ought to be examined with the most earnest care.

Appellant urges that now is the time to modify a rule without substantive warrant or practical benefit. Everything good in the apportionment decisions can be preserved, and all the friction removed, by the recognition of a rule of reasonable approximation—a recognition compelled by a proper view of the governing substantive law.

The present judgment must be reversed, and Senate Bill One validated, if any modification in the rule of strict arithmetical equality be mandated by law, for the deviations herein shown clearly fall well within any imaginable area of reasonable approximation. Such a holding might, however, leave the courts below, and this Court, in somewhat the same position of inextricable involvement in State political processes as the *Kirkpatrick* rule has here produced, for judgments of sheer "reasonableness" must be made case-by-case. Appellant will, therefore, further contend that this Court may warrantably set a fixed percentage figure of variation permissible without inquiry, so long as independent constitutional norms are not invokable. Such a figure could not properly be called arbitrary; it is never "arbitrary" to do that which is needful. The much panegyrized remedial flexibilities of equity are not so constricted that the selection of a number, where a number is urgently required, is beyond them. [*United States v. Thirty-seven Photographs,* 402 U.S. 363, 372-375, (1971) is here very closely in point. Cf. *Dunn v. Blumstein,* — U.S. —, 92 S. Ct. 995, 1006 (1972).] Such a provision has already been suggested in Mr. Justice White's dissenting opinion in *Kirkpatrick,* 394 U.S. at 553, and has been advocated by one commentator as a constitutional amendment, Dixon, *The*

Warren Court Crusade for the Holy Grail of "One Man—One Vote," 1969 SUPREME COURT REVIEW 219, 234-243. Professor Dixon makes an unanswerable case for the utility and justice of such a rule, but it will be appellant's submission that equity does not need a constitutional amendment, or even a statute, to serve utility and justice in the remedially apt manner. Moreover, as has been suggested *supra,* the state median and average variations from the national ideal district, taken together, might readily be held to provide a rationale for a flexibility of perhaps six percent up or down. The firm designation of such a percentage would cure all the evils in the situation. Any Legislature could proceed confidently and stay well within the law; no voter, as has been shown, would have any substantively valid ground for complaint; the courts would be out of the picture, in the normal run of cases.

III.

Whatever the Court's disposition of the preceding points, this judgment evidently must be reversed, since there was no conceivable warrant for the Court's adopting Plan C as ". . . the plan of this Court for the congressional districts of the State of Texas . . .", and the procedure leading to that adoption was grossly defective.

It is appellant's earnest hope that this Court, for the reasons already given, will uphold the Texas Legislature's plan. But, even if this should not occur, on no view can the adoption of Plan C be upheld, and this judgment must accordingly be reversed.

The Court below had before it four plans—the Legislature's plan, two plans submitted by plaintiffs, Plans B and C, and a plan submitted by intervenors. Plan B more closely follows the Legislature's plan than does

Plan C, and actually deviates less than Plan C from population equality. If, then (as appellant contends was not the case), the duty of the Court below had been confined to that of selecting among plans submitted by plaintiffs, it is perfectly plain that Plan B ought to have been selected. No reasons of an order of magnitude remotely commensurate with the puzzling and very serious choice made are given in the short *per curiam* opinion, or in any argument at any time tendered by appellees. The transcript of argument at the trial below on January 21, 1972, shows that even plaintiffs' counsel repeatedly recommended the adoption of Plan B. Nothing whatever in the Record supports or even bears upon the choice made.

It is submitted that what the court below should have done, having resolved that Senate Bill One was unconstitutional, was to invite proposals, from all parties at the least, and perhaps from all who chose to intervene (for the plaintiffs had no special status as guardians of the public weal). (The State of Texas had up to that point had no occasion to prepare or submit a substitute plan, for its *bona fide* contention had been (as it still is) that Senate Bill One was acceptable, and the proposal of a plan, before the adverse judgment on Senate Bill One was known, would have constituted an usurpation of the Legislature's powers by those law officers whose duty it was to defend the Legislature's action.) The court below should then have begun consideration of an appropriate decree, giving maximum weight to the Legislature's judgments, consistent with its own views on population requirements.

There is in the Record no evidence whatever on the practicality, prudence or wisdom of Plan C, nor even any distinct indication that these things were considered *in camera*.

In these procedural and substantive aspects, the District Court's adoption of Plan C is utterly unsupportable, and the judgment of which it is the heart cannot stand.

CONCLUSION

For the foregoing reasons, appellant respectfully submits that the questions presented herein are highly substantial, going to the essence of sound political structuring and judicial action thereon, and merit full consideration by this Court.

Respectfully submitted,

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APPENDIX A

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CIVIL ACTION NO CA-3-5202-D
(Three Judge Court)

DAN WEISER, ET AL.

v.

HONORABLE BOB BULLOCK, SECRETARY
OF STATE OF THE STATE OF TEXAS

[filed January 22, 1972]

OPINION AND ORDER

Before INGRAHAM, Circuit Judge, and TAYLOR and HILL, District judges.

Per Curiam: Plaintiffs attack the constitutionality of the Texas statute establishing congressional districts for the State of Texas, S.B. 1, now codified as Art. 197d, V.A.C.S. (1971). Under the provisions of secs. 2 through 25 of S.B. 1, the population of the largest legislative district established is 19,275 persons greater than that of the smallest district, producing a deviation of 4.1 percent.

In *Kirkpatrick v. Preisler,* 394 U.S. 526 (1969), the Supreme Court held that in congressional redistricting a State must "make a good-faith effort to achieve precise mathematical equality." 394 U.S. at 530. Population variances are not permissible unless the State shows either that they resulted despite such an effort or unless "the State (justifies) each variance, no matter how small." 394 U.S. at 531. The record in

this case fails to show that in the enactment of S.B. 1 the Legislature of the State of Texas "came as close to equality as it might have come." 394 U.S. at 531. Nor has the State justified the variances in S.B. 1 within the principles laid down in *Kirkpatrick*. Therefore this Court holds that S.B. 1 is unconstitutional. Accordingly, defendant is enjoined from conducting or permitting any primary or general elections based upon the districts established by S.B. 1.

Van Henry Archer, Jr., individually and as Chairman of the Bexar County Republican Party, and others, have applied to this Court for leave to intervene as plaintiffs. Leave to intervene is hereby granted to the extent stated by the attorney for intervenors in open court.

Defendant has not submitted any plan of reapportionment as an alternative to S.B. 1. Plaintiffs have proposed two plans, B and C. Plan B is based on S.B. 1, but has a significantly lower deviation than S.B. 1. Plan C is based solely on population and is significantly more compact and contiguous than either S.B. 1 or Plan B. The population deviation in Plan C is less than 3/10 of one percent (.0028). The Court has considered Plans B and C, as well as the plan submitted by the intervening plaintiffs, and concludes that Plan C best effectuates the principle of "one man, one vote" enunciated by the Supreme Court.

It is therefore ORDERED that Plan C, as set forth in detail in Exhibit A attached hereto and made a part hereof, be and it is hereby adopted as the plan of this Court for the congressional districts of the State of Texas and said plan is hereby declared to be in effect and operative immediately upon the signing of this Opinion and Order as establishing the Congressional Districts of the State of Texas.

This Order is entered without prejudice to the legislative and executive branches of the State of Texas to proceed with the consideration and adoption of any other constitutionally permissible plan of congressional redistricting at a called or regular session of the Legislature of the State of Texas. This Court retains jurisdiction of this cause for the purposes of considering any such plan which might be adopted by the Legislature of the State of Texas until congressional reapportionment is enacted based on the Twentieth Decennial Census to be conducted in 1980.

The deadline in Texas for the filing by candidates for Congress of the United States is February 7, 1972. This Court also retains jurisdiction for the purpose of extending the filing deadline for candidates in congressional districts in the event it is made known to this Court that a called session of the Legislature will include congressional reapportionment.

Plaintiffs sue on behalf themselves and all other qualified voters, registered and unregistered, within the several districts wherein the respective plaintiffs reside as well as all other qualified voters in all other congressional districts in the State of Texas. The Order entered herein is determinative of the rights of all others regarding congressional redistricting. Proceeding herein with this cause as a class action is not only unnecessary but creates problems with reference to notice and the rights of other individual members of the class. Maintenance of this cause as a class action is hereby denied.

Copies of this judgment and order will be forwarded to all attorneys of record, the Governor of the State of Texas, the Lieutenant Governor of the State of Texas, the Speaker of the House of Representatives of the

State of Texas. the Secretary of State of the State of Texas, and the Attorney General of the State of Texas.

It is further ORDERED that this judgment be considered, for purposes of appeal and otherwise, as a final judgment in this case, and that no stay proceedings pending appeal will be granted by this Court.

Dated at Dallas, Texas this 22nd day of January, 1972.

JOE INGRAHAM
United States Circuit Judge

WM. M. TAYLOR, JR.
United States District Judge

ROBERT M. HILL
United States District Judge

EXHIBIT A

DISTRICT 1 is composed of Bowie, Camp, Cass, Delta, Fannin, Franklin, Grayson, Harrison, Hopkins, Lamar, Marion, Morris, Rains, Red River, Rockwall, Titus, Upshur and Wood Counties; and all of Hunt County not included in the Celeste census county division.

DISTRICT 2 is composed of Angelina, Brazos, Grimes, Hardin, Houston, Jasper, Liberty, Madison, Montgomery, Newton, Orange, Polk, Robertson, Sabine, San Augustine, San Jacinto, Trinity, Tyler, and Walker Counties; and that part of Leon County included in the Centerville and Oakwood census county divisions.

DISTRICT 3 is composed of that part of the city of Richardson in the Plano census county division of Collin County, and that part of Dallas County included in census tracts 1, 2.01, 2.02, 3, 6.01, 6.02, 7.02, 9, 10,

11.01, 11.02, 12, 14, 71.01, 72, 73.01, 73.02, 74, 75.01, 75.02, 76.01, 76.02, 76.03, 76.04, 77, 78.01, 78.02, 78.03, 79.01, 79.02, 80, 81, 82, 94, 95, 96.01, 96.02, 96.03, 96.04, 97, 98, 99, 128, 129, 130.01, 130.02, 131, 132, 133, 134.01, 134.02, 135, 136.01, 136.02, 136.03, 137.01, 137.02, 137.03, 137.04, 137.05, 138.01, 138.02, 139, 140.01, 140.02, 141.01, 141.02, 141.03, 141.04, 142, 143, 144, 145, 146, 147, 185.02, 190.02, 190.03, 190.04, 191, 192.01, 192.02, 192.03, 192.04, 192.05, 192.06, 192.07, 193.01, 193.02, 194, 195.01, 195.02, 196, 197 and 198.

DISTRICT 4 is composed of Anderson, Cherokee, Freestone, Gregg, Henderson, Kaufman, Nacogdoches, Navarro, Panola, Rusk, Shelby, Smith and Van Zandt Counties; and that part of Leon County not included in District 2.

DISTRICT 5 is composed of that part of Dallas County not included in District 3 or 24.

DISTRICT 6 is composed of Hood and Johnson Counties; and that part of Tarrant County included in census tracts 13, 14.01, 14.03, 16, 19, 23.01, 23.02, 24.01, 24.02, 25, 26, 28, 29, 30, 31, 32, 33, 34, 36.01, 36.02, 37.01, 37.02, 38, 39, 40, 41, 42.01, 42.02, 43, 44, 45.01, 45.02, 45.03, 46.01, 46.02, 46.03, 46.04, 46.05, 47, 48.01, 48.02, 51, 52, 53, 54.01, 54.02, 55.01, 55.02, 55.03, 55.04, 56, 57.01, 57.02, 58, 59, 60.01, 60.02, 60.03, 61.01, 61.02, 62, 63, 64, 65.01, 65.02, 65.03, 65.04, 65.05, 108.01, 108.02, 108.03, 109, 110.01, 110.02, 111.01, 111.02, 112.01, 112.02, 113, 114, 115.01, 115.02, 115.03, 115.04, 130, 131, 216.01, 216.02, 216.03, 217.01, 217.02, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228 and 229.

DISTRICT 7 is composed of that part of Harris County included in census tracts 558, 557, 554, 553, 552, 556, 555, 551, 545, 550, 549, 548, 547, 546, 544, 537, 538, 541, 540, 452, 451, 543, 542, 529, 528, 527, 526, 519, 517,

443, 442, 441, 444, 447, 448, 450, 449, 446, 445, 440, 421, 406, 420, 422, 439, 438, 437, 436, 423, 419, 424, 435, 407, 409, 408, 411, 418, 417, 416, 425, 426, 434, 429, 428, 427, 433, 431, 432, 333, 413, 334, 536, and 430; and that part of census tract 405 included in census block group 5.

DISTRICT 8 is composed of that part of Harris County included in census tracts 559, 244, 245, 243, 242, 535, 241, 533, 240, 223, 531, 532, 222, 221, 224, 525, 524, 523, 522, 220, 218, 225, 217, 216, 216, 227, 521, 229, 228, 230, 214, 203, 209, 213, 231, 212, 202, 210, 211, 232, 233, 321, 320, 322, 350, 351, 352, 354, 234, 262, 261, 267, 268, 263, 265, 266, 270, 269, 271, 264, 361, 362, 273, 274, 272, 275, 364, 360, 363, 365, 530, 539, 534, 254 and 353.

DISTRICT 9 is composed of Chambers, Galveston and Jefferson Counties and that part of Harris County included in census tracts 250, 249, 247, 238, 251, 248, 246, 252, 253, 237, 236, 256, 255, 257, 258, 235, 259, 260, 226 and 239.

DISTRICT 10 is composed of Austin, Bastrop, Blanco, Caldwell, Fayette, Hays, Travis, and Washington Counties; that part of Guadalupe County included in the Seguin East, Seguin North, and Seguin Southwest census county divisions; that part of Lavaca County included in the Moulton and Shiner census county divisions; all of Waller County not included in the Brookshire census county division; all of Colorado County not included in the Garwood census county division; and all of Gonzales not included in the Nixon census county division.

DISTRICT 11 is composed of Bell, Bosque, Burleson, Burnett, Coryell, Falls, Hamilton, Lampasas, Lee, Limestone, McLennan, Milam, Mills, Somervell and Williamson Counties; that part of Brown County included in the Brookesmith census county division; and

that part of San Saba County included in the San Saba North census county division.

DISTRICT 12 is composed of Cooke and Denton Counties; that part of Collin County not included in District 3, that part of Tarrant County not included in District 6, and that part of Hunt County not included in District 1.

DISTRICT 13 is composed of Armstrong, Bailey, Briscoe, Carson, Castro, Childress, Collingworth, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Floyd, Foard, Gray, Hale, Hall, Hansford, Hardeman, Hartley, Hemphill, Hutchinson, Kent, King, Lamb, Lipscomb, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Stonewall, Swisher and Wheeler Counties; that part of Knox County not included in District 17, that part of Haskell County not included in District 17, and that part of Hockley County not included in District 19.

DISTRICT 14 is composed of Aransas, Calhoun, Jackson, Matagorda, Nueces, Refugio, San Patricio, Victoria and Wharton Counties; that part of Colorado County not included in District 10; and that part of Lavaca County not included in District 10.

DISTRICT 15 is composed of Brooks, Cameron, Duval, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kleberg, Live Oak, McMullen, Starr, Willacy, and Zapata Counties; that part of Bee County included in the Pettus-Pawnee census county division; and that part of Karnes County included in the Kenedy census county division.

DISTRICT 16 is composed of Brewster, Crane, Culberson, El Paso, Hudspeth, Jeff Davis, Loving, Pecos, Presidio, Reeves, Terrell, Val Verde, Ward, and Winkler Counties.

DISTRICT 17 is composed of Archer, Baylor, Callahan, Clay, Comanche, Eastland, Erath, Jack, Jones, Montague, Palo Pinto, Parker, Shackelford, Stephens, Taylor, Throckmorton, Wichita, Wilbarger, Wise and Young Counties; that part of Haskell County included in the Hasket and Weinert census county divisions, and that part of Knox County included in the Goree census county division.

DISTRICT 18 is composed of that part of Harris County not included in District 7 or 8 or 9 or 22.

DISTRICT 19 is composed of Andrews, Borden, Cochran, Dawson, Ector, Gaines, Garza, Howard, Lubbock, Lynn, Martin, Midland, Terry, Upton and Yoakum Counties; and that part of Hockley County included in the Ropesville census county division.

DISTRICT 20 is composed of that part of Bexar County included in census tracts 1106, 1107, 1203, 1204, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1218, 1219, 1601, 1604, 1605, 1606, 1607, 1614, 1615, 1616, 1617, 1618, 1619, 1701, 1702, 1703, 1704, 1705, 1706, 1707, 1708, 1709, 1710, 1711, 1712, 1713, 1714, 1715, 1716, 1717, 1718, 1719, 1720, 1801, 1802, 1803, 1804, 1805, 1806, 1807, 1808, 1809, 1810, 1811, 1812, 1813, 1814, 1815, 1816, 1817, 1818, 1819, 1820, 1821, 1901, 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916 and 1917.

DISTRICT 21 is composed of Bandera, Coke, Coleman, Comal, Concho, Crockett, Dimmit, Edwards, Fisher, Frio, Gillespie, Glasscock, Irion, Kendall, Kerr, Kimble, Kinney, LaSalle, Llano, Mason, Maverick, McCulloch, Medina, Menard, Mitchell, Nolan, Reagan, Real, Runnels, Schleicher, Scurry, Sterling, Sutton, Tom Green, Uvalde, Webb and Zavala Counties; that part of Brown County not included in District 11, that part of San Saba County not included in

District 11 and that part of Atascosa County not included in District 23.

DISTRICT 22 is composed of Brazoria and Fort Bend Counties; that part of Waller County not included in District 10; and that part of Harris County included in census tracts 412, 414, 415, 331, 332, 329, 366, 339, 340, 335, 338, 336, 337, 341, 343, 342, 319, 325, 326, 324, 410, 355, 356, 349, 357, 358, 348, 359, 347, 346, 345, 370, 367, 369, 368, 373, 374, 371, 372, 375, 327, 323 and 344.

DISTRICT 23 is composed of DeWitt, Goliad and Wilson Counties; that part of Bee County not included in District 15; that part of Karnes County not included in District 15; that part of Guadalupe County not included in District 10; that part of Atascosa County included in the Poteet census county division; that part of Gonzales County not included in District 10; and that part of Bexar County not included in District 20.

DISTRICT 24 is composed of Ellis and Hill Counties and that part of Dallas County included in census tracts 4.01, 4.02, 4.03, 5, 7.01, 20, 41, 42, 43, 44, 45, 46, 47, 48, 50, 51, 52, 53, 54, 56, 57, 59.01, 59.02, 60.01, 60.02, 61, 62, 63.01, 63.02, 64, 65, 67, 68, 69, 71.02, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111.01, 111.02, 112, 113, 148, 149, 150, 151, 152, 153.01, 153.02, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165.01, 165.02, 165.03, 165.04, 165.05, 166.01, 166.02, 166.03, 166.04, 167.01, 167.02, 168, 169.01, 169.02, 169.03, 169.04 and 199.

IN THE
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CIVIL ACTION NO. CA-3-5202-D

DAN WEISER, ET AL.
v.
HONORABLE BOB BULLOCK, SECRETARY
OF STATE OF THE STATE OF TEXAS
[filed January 25, 1972]

ORDER

Plaintiffs having moved the Court to amend its Opinion and Order of the 22nd day of January, 1972 pursuant to Rule 60(a) of the Rules of Federal Procedure, and the Court being of the opinion that the amendment solely rectifies clerical errors and that the motion should be granted;

It is ORDERED that Congressional District 10 described in the Opinion and Order of this Court of January 22, 1972 shall be amended so as to read as follows:

> DISTRICT 10 is composed of Austin, Bastrop, Blanco, Caldwell, Fayette, Hays, Travis, and Washington Counties; that part of Guadalupe County included in the Seguin East, Seguin North, and Seguin Southeast census county divisions; that part of Lavaca County included in the Moulton and Shiner census county divisions; all of Wallar County not included in the Brookshire census county division; all of Colorado County not included in the Garwood censes county division; and all of Gonzales not included in the Nixon census county division.

It is so ORDERED that Congressional District 24 described in the Opinion and Order of this Court of January 22, 1972 shall be amended so as to read as follows:

> DISTRICT 24 is composed of Ellis and Hill Counties and that part of Dallas County included in census tracts 4.01, 4.02, 4.03, 5, 18, 20, 41, 42, 43, 44, 45, 46, 47, 48, 50, 51, 52, 53, 54, 56, 57, 59.01, 59.02, 60.01, 60.02, 61, 62, 63.01, 63.02, 64, 65, 67, 68, 69, 71.02, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111.01, 111.02, 112, 113, 148, 149, 150, 151, 152, 153.01, 153.02, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165.01, 165.02, 165.03, 165.04, 165.05, 166.01, 166.02, 166.03, 166.04, 167.01, 167.02, 168, 169.01, 169.02, 169.03, 169.04 and 199.

Copies of this Order will be forwarded to all attorneys of record, the Governor of the State of Texas, the Lieutenant Governor of the State of Texas, the Speaker of the House of Representatives of the State of Texas, the Secretary of State of the State of Texas, and the Attorney General of the State of Texas.

Dated at Dallas, Texas this 25th day of January, 1972.

JOE INGRAHAM
United States Circuit Judge

W. M. TAYLOR, JR.
United States District Judge

ROBT. M. HILL
United States District Judge

APPENDIX B

APPORTIONMENT—CONGRESSIONAL DISTRICTS

CHAPTER 12"

S. B. No. 1

An Act relating to reapportionment of congressional districts; repealing Chapter 342, Acts of the 60th Legislature, Regular Session, 1967 (Article 197c, Vernon's Texas Civil Statutes); and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. The State of Texas is apportioned into Congressional Districts as provided in the following sections. Each district is entitled to elect one Member to the House of Representatives of the Congress of the United States.

Sec. 2. District 1 is composed of Bowie, Camp, Cass, Cherokee, Delta, Fannin, Franklin, Harrison, Henderson, Hopkins, Lamar, Marion, Morris, Panola, Red River, Rusk, San Augustine, Shelby, Titus, Upshur, and Wood Counties.

Sec. 3. District 2 is composed is Anderson, Angelina, Freestone, Grimes, Hardin, Houston, Jasper, Leon, Liberty, Madison, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Jacinto, Trinity, Tyler, and Walker Counties.

Sec. 4. District 3 is composed of that part of Dallas County included in census tracts 192.05, 192.06, 192.07, 192.04, 192.03, 192.02, 192.01, 191, 190.02, 190.03, 185.02, 130.02, 130.01, 78.03, 78.02, 136.02, 136.03, 132, 133, 131,

"Vernon's Ann.Civ.St. art. 197d, §§ 1-29.

78.01, 76.04, 77, 136.01, 96.04, 134.02, 76.03, 75.02, 137.04, 137.05, 138.01, 96.03, 96.02, 134.01, 135, 76.01, 76.02, 75.01, 74, 73.01, 73.02, 71.02, 4.03, 95, 94, 98, 97, 96.01, 138.02, 137.01, 137.02, 139, 140.01, 72, 6.01, 4.02, 4.01, 6.02, 5, 19, 100, 99, 137.03, 140.02, 142, 148, 147, 146, 145, 152, 149, 150, 151, 198, 143, 101, 102, 103, 104, 69, 68, 43, 44, 42, 20, 105, 106, 190.04, 1955.01, 18, 7.01, and 41.

Sec. 5. District 4 is composed of Collin, Grayson, Hunt, Gregg, Kaufman, Rains, Rockwall, Smith, and Van Zandt Counties, and that part of Dallas County included in census tracts 181.01, 181.02, 181.03, 181.04, and 182.

Sec. 6. District 5 is composed of that part of Dallas County included in census tracts, 190.01, 190.06, 190.07, 190.05, 189, 188, 185.01, 186, 187, 183, 184, 126, 127, 128, 129, 180, 125, 124, 82, 179, 123, 122.01, 81, 80, 1, 12, 79.01, 193.01, 193.02, 3, 2.02, 2.01, 10, 11.01, 11.02, 14, 15.01, 13.01, 13.02, 15.02, 22.02, 31.02, 30, 33, 34, 29, 35, 36, 28, 23, 24, 25, 26, 27.01, 27.02, 37, 38, 39.01, 39.02, 40, 83, 84, 85, 91.01, 91.02, 93.01, 93.02, 115, 122.02, 178.01, 178.02, 90.01, 90.02, 92.01, 121, 120, 119, 176.02, 176.01, 172, 175, 174, 177, 173.02, 173.01, 170, 194, 195.02, 71.01, 197, 196, 7.02, 9, 8, 16, 22.01, 17.01, 21, 31.01, 32.01, 32.02, 118, 92.02, 79.02, and 17.02.

Sec. 7. District 6 is composed of Brazos, Ellis, Hill, Johnson, Limestone, Navarro, and Robertson Counties; that part of Dallas County included in census tracts 164, 165.01, 165.02, 165.03, 165.04, 165.05, 166.04, 166.03, 166.02, 166.01, 109, 108, 61, 110, 111.01, 111.02, 112, 113, 167.01, 167.02, 168, 169.04, 169.01, 169.02, 169.03, 171, 116, and 117; and that part of Tarrant County included in census tracts 108.03, 109, 54.01, 55.01, 54.02, 42.01, 43, 42.02, 48.01, 47, 56, 48.02, 55.02, 57.01, 58, 59, 60.02, 60.01, 110.02, 57.02, 55.03, 55.04, and 110.01.

Sec. 8. District 7 is composed of that part of Harris County included in census tracts 558, 557, 554, 553, 552, 556, 555, 551, 545, 550, 549, 548, 547, 546, 544, 537, 538, 541, 540, 452, 451, 543, 542, 529, 528, 527, 526, 519, 517, 443, 442, 441, 444, 447, 448, 450, 449, 446, 445, 440, 421, 406, 420, 422, 439, 438, 437, 436, 423, 419, 424, 435, 407, 409, 408, 411, 418, 417, 416, 425, 426, 434, 429, 428, 427, 433, 430, 431, 432, 410, and 413, and that part of census tract 405 included in census block group 5.

Sec. 9. District 8 is composed of that part of Harris County included in census tracts 559, 244, 245, 243, 242, 536, 535, 241, 533, 240, 223, 531, 532, 222, 221, 224, 525, 524, 523, 522, 220, 218, 225, 217, 216, 215, 227, 208, 229, 228, 230, 214, 203, 209, 213, 231, 212, 202, 210, 211, 232, 233, 321, 320, 322, 350, 351, 352, 354, 234, 262, 261, 267, 268, 263, 265, 266, 270, 269, 271, 264, 361, 362, 273, 274, 272, 275, 364, 360, 363, 365, 530, 539, and 534.

Sec. 10. District 9 is composed of Chambers, Galveston, and Jefferson Counties and that part of Harris County included in census tracts 250, 249, 247, 238, 251, 248, 246, 252, 253, 237, 236, 254, 256, 255, 257, 258, 235, 259, 260, 226, and 239.

Sec. 11. District 10 is composed of Austin, Bastrop, Blanco, Burleson, Caldwell, Colorado, Fayette, Hays, Lee, Travis, Waller, and Washington Counties.

Sec. 12. District 11 is composed of Bell, Bosque, Burnet, Coryell, Falls, Hamilton, Hood, Lampasas, McLennan, Milam, Mills, Parker, Somervell, and Williamson Counties.

Sec. 13. District 12 is composed of that part of Tarrant County not included in district 6 or 24.

Sec. 14. District 13 is composed of Archer, Armstrong, Baylor, Briscoe, Carson, Childress, Clay, Collingsworth, Cottle, Dallam, Dickens, Donley, Foard, Gray, Hall, Hansford, Hardeman, Hartley, Hemphill, Hutchinson, King, Knox, Lipscomb, Moore, Motley, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher, Wheeler, Wichita, and Wilbarger Counties.

Sec. 15. District 14 is composed of Aransas, Calhoun, Jackson, Matagorda, Nueces, Refugio, San Patricio, Victoria, and Wharton Counties, and that part of Brazoria County included in enumeration districts 108, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 153B, 158, 159, 160, and 160B.

Sec. 16. District 15 is composed of Brooks, Cameron, Duval, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kleberg, Live Oak, McMullen, Starr, Willacy, and Zapata Counties.

Sec. 17. District 16 is composed of Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Loving, Presidio, Reeves, Ward, and Winkler Counties, and that part of Ector County not included in district 19.

Sec. 18. District 17 is composed of Borden, Brown, Callahan, Coleman, Comanche, Cooke, Crosby, Eastland, Erath, Fisher, Floyd, Garza, Haskell, Howard, Jack, Jones, Kent, McCulloch, Mitchell, Montague, Nolan, Palo Pinto, San Saba, Scurry, Shackelford, Stephens, Stonewall, Taylor, Throckmorton, Wise, and Young Counties.

Sec. 19. District 18 is composed of that part of Harris County included in census tracts 219, 521, 520, 510, 518, 509, 207, 511, 513, 512, 507, 508, 206, 204, 205, 503, 506, 516, 514, 515, 505, 504, 502, 501, 201, 121, 401, 126,

121, 123, 402, 125, 403, 404, 124, 303, 302, 301, 311, 310, 312, 309, 313, 304, 306, 305, 316, 307, 308, 314, 315, 317, 330, 318, 328, and that part of census tract 405 not included in census block group 5.

Sec. 20. District 19 is composed of Andrews, Bailey, Castro, Cochran, Dawson, Deaf Smith, Gaines, Hale, Hockley, Lamb, Lubbock, Lynn, Martin, Midland, Parmer, Terry, and Yoakum Counties, and that part of Ector County included in census tracts 3, 4, 5, 6, 7, 24, and 25, and that part of census tract 21 East of U. S. Highway 385 and North of the Texas and Pacific Railroad.

Sec. 21. District 20 is composed of that part of Bexar County not included in district 21 or 23.

Sec. 22. District 21 is composed of Bandera, Coke, Comal, Concho, Crane, Crockett, Edwards, Gillespie, Glasscock, Irion, Kendall, Kerr, Kimble, Kinney, Llano, Mason, Menard, Pecos, Reagan, Real, Runnels, Schleicher, Sterling, Sutton, Terrell, Tom Green, Upton, Uvalde, and Val Verde Counties, and that part of Bexar County included in census tracts 1719, 1720, 1816, 1817, 1806, 1807, 1815, 1821, 1820, 1819, 1915, 1916, 1914, 1818, 1814, 1809, 1810, 1811, 1813, 1812, 1911, 1912, 1909, 1913, 1207, 1210, 1209, 1208, 1206, 1203, 1204, 1803, 1808, 1802, 1908, 1718, 1717, 1714, 1805, 1917, 1211, 1212, 1213, 1617, 1219, 1218, and 1215.

Sec. 23. District 22 is composed of Fort Bend County; that part of Brazoria County not included in district 14; and that part of Harris County included in census tracts 412, 414, 415, 331, 329, 332, 333, 334, 339, 340, 335, 338, 336, 337, 341, 343, 342, 319, 325, 326, 324, 334, 353, 355, 356, 349, 357, 358, 366, 348, 359, 347, 346, 345, 370, 367, 369, 368, 373, 374, 371, 372, 375, 327, and 323.

Sec. 24. District 23 is composed of Atascosa, Bee, DeWitt, Dimmit, Frio, Goliad, Gonzales, Guadalupe, Karnes, LaSalle, Lavaca, Maverick, Medina, Webb, Wilson, and Zavala Counties, and that part of Bexar County included in census tracts 1619, 1620, 1612, 1613, 1610, 1611, 1512, 1520, 1521, 1513, 1511, 1514, 1516, 1518, 1519, 1522, 1416, 1415, 1418, 1417, 1414, 1413, 1419, 1312, 1313, 1314, 1310, 1309, 1315, 1205, 1214, 1217, 1216, 1317, 1316, 1318, 1517, 1615, and 1618.

Sec. 25. District 24 is composed of Denton County; that part of Dallas County included in census tracts 153.01, 153.02, 144, 141.04, 141.03, 141.02, 154, 161, 141.01, 155, 160, 162, 156, 157, 159, 163, 158, 107, 67, 199, 65, 64, 45, 53, 52, 46, 47, 51, 50, 63.02, 62, 48, 54, 56, 49, 89, 55, 88, 86, 114.02, 87.01, 87.02, 57, 59.01, 59.02, 60.01, 63.01, 114.01, and 60.02, and that part of Tarrant County included in census tracts 65.05, 131, 130, 218, 217.02, 217.01, 216.02, 216.01, 65.04, 65.01, 14.01, 65.02, 65.03, 14.03, 3, 216.03, 115.01, 115.02, 222, 223, 225, 224, 221, 220, 219, 229, 228, 227, 226, 115.03, 115.04, 114, 111.02, 60.03, 112.02, 112.01, and 113.

Sec. 26. The terms "census tract" and "census enumeration district" as used in this Act, mean those geographic areas outlined and identified as such on official place, county, and metropolitan map series maps prepared by the United States Department of Commerce Bureau of the Census for the Nineteenth Decennial Census of the United States, enumerated as of April 1, 1970. "Block groups" are subdivisions of census tracts as defined on census metropolitan maps which differentiate block groups by the first digit of the block numbers assigned to city blocks within each tract.

Sec. 27. The Texas Legislative Council shall furnish to the Commissioners Court of each county which

is divided into two or more districts appropriate maps showing census tract, census enumeration district, or census block group lines to facilitate the identification of district lines.

Sec. 28. Chapter 342, Acts of the 60th Legislature, Regular Session, 1967 (Article 197c, Vernon's Texas Civil Statutes), is repealed.[42]

Sec. 29. Nothing in this Act affects the tenure in office of the present delegation in Congress, but this Act takes effect for the general election in 1972.

Sec. 30. The importance of this legislation and the crowded condition of the calendars in both Houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and this Rule is hereby suspended.

Passed the Senate on June 1, 1971, by a viva voce vote; June 2, 1971, Senate refused to concur in House amendments and requested appointment of Conference Committee; June 2, 1971, House granted request of the Senate; June 4, 1971, Senate adopted Conference Report: Yeas 17, Nays 9, and one paired vote; passed the House on June 2, 1971, with amendments: Yeas 66, Nays 49; June 2, 1971, House granted request of the Senate for appointment of Conference Committee; June 4, 1971, House adopted Conference Report: Yeas 80, Nays 53, and one present not voting.

Approved June 17, 1971.

Effective Sept. 3, 1971, 90 days after date of adjournment.

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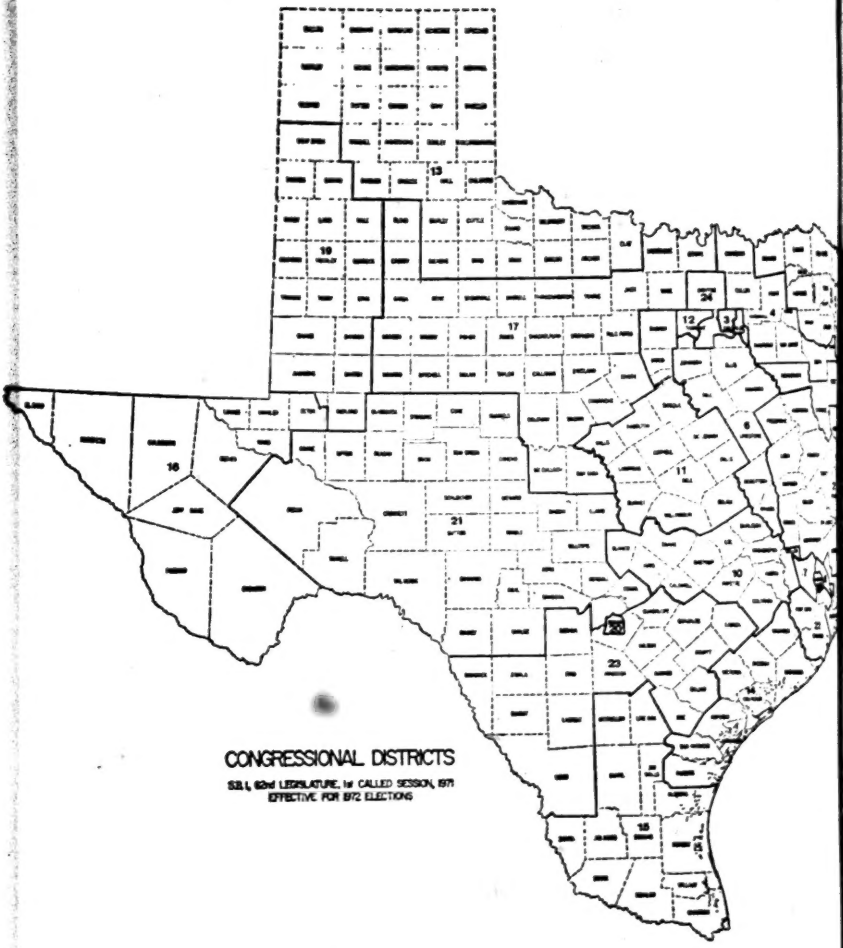
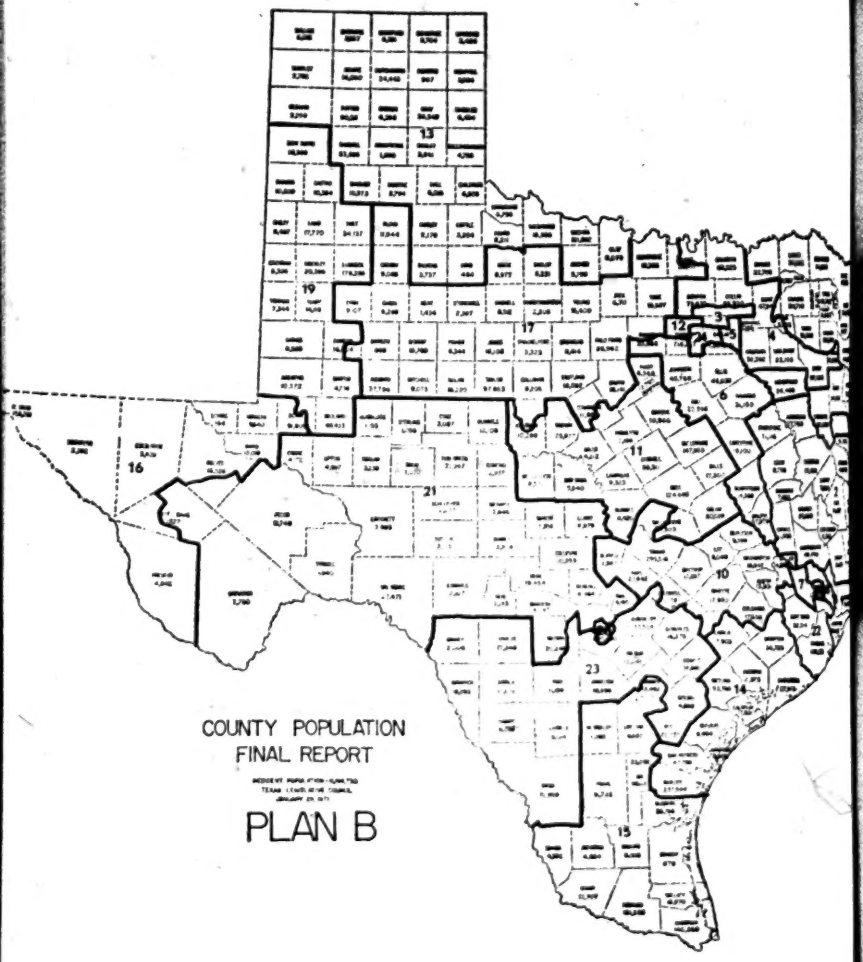
[42]Vernon's Ann. Civ.St. art. 197c, repealed.


CONGRESSIONAL DISTRICTS
SB 1, 62nd LEGISLATURE, 1st CALLED SESSION, 1971
EFFECTIVE FOR 1972 ELECTIONS

DEVIATION TABLE
SENATE BILL ONE
[from the Complaint]

District	Population	Difference (±)	% Difference
1	461,879	—4651	1.00
2	466,836	+ 306	.01
3	465,221	—1309	.28
4	463,142	—3388	.73
5	465,093	—1437	.31
6	467,913	+1383	.30
7	461,704	—4826	1.03
8	461,216	—5314	1.14
9	467,483	+ 953	.20
10	465,493	—1037	.22
11	468,148	+1618	.35
12	465,671	— 859	.18
13	477,856	+11,326	2.43
14	467,839	+1309	.28
15	458,581	—7949	1.70
16	477,614	+11,084	2.38
17	467,912	+1382	.30
18	462,062	—4468	.96
19	477,459	+10,929	2.34
20	467,942	+1412	.30
21	466,656	+ 126	.03
22	461,448	—5082	1.09
23	466,248	— 282	.06
24	465,314	—1216	.26

APPENDIX C



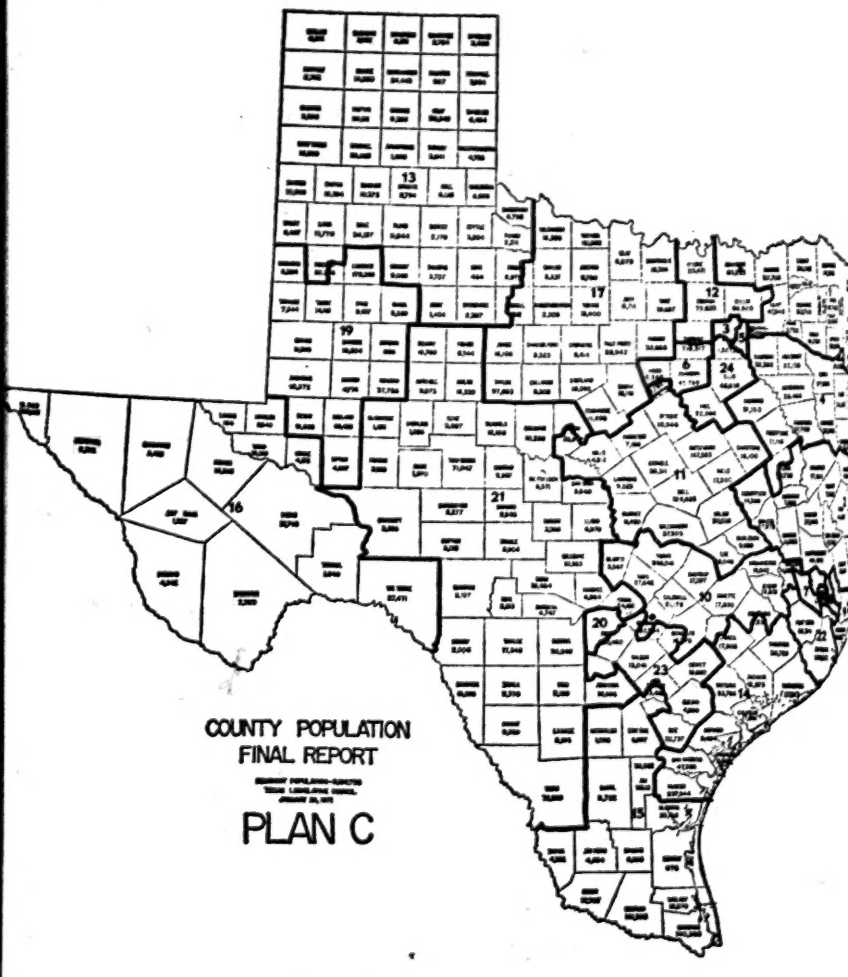
PLAN B

POPULATION VARIATIONS FROM "IDEAL" DISTRICT

[from the Amended Complaint]

District	Population	Differences (±)
1	466,545	+ 15
2	466,565	+ 35
3	466,266	—264
4	466,234	—296
5	466,620	+ 90
6	466,285	—245
7	466,336	—194
8	466,704	+174
9	466,678	+148
10	466,313	—217
11	466,258	—272
12	466,930	+400
13	466,663	+133
14	466,437	— 93
15	466,359	—171
16	466,663	+133
17	466,432	— 98
18	466,520	— 10
19	466,649	+119
20	466,514	— 16
21	466,753	+223
22	466,707	+177
23	466,424	—106
24	466,875	+345

APPENDIX D



PLAN C:

POPULATION VARIATIONS FROM "IDEAL" DISTRICT

[from the Amended Compaint]

District	Population	Differences (±)
1	465,986	—544
2	466,817	+287
3	466,835	+305
4	467,108	+578
5	466,258	—272
6	467,023	+493
7	466,336	—194
8	466,704	+174
9	466,678	+148
10	466,303	—227
11	466,569	+ 39
12	466,926	+396
13	467,173	+648
14	466,437	— 93
15	466,359	—171
16	465,941	—589
17	466,340	—190
18	466,520	— 10
19	466,154	—376
20	466,654	+124
21	466,875	+345
22	466,707	+177
23	466,167	—363
24	465,855	—675

APPENDIX E

Ranking of States by Deviation of State Ideal District from National Ideal District

(202,428,262 ÷ 435 = 465,352)

State	Number of Districts	"Ideal" District	Deviation from National "Ideal" District	Percent Varia
1. Alaska	1	302,173	—163,179	35.0
2. Wyoming	1	332,416	—132,936	28.5
3. South Dakota	2	333,129	—132,223	28.4
4. Montana	2	347,205	—118,147	25.3
5. Idaho	2	356,504	—108,848	23.3
6. New Hampshire	2	368,841	— 96,511	20.7
7. Hawaii	2	384,957	— 80,395	17.2
8. Oklahoma	6	426,542	— 38,810	8.3
9. South Carolina	6	431,753	— 33,599	7.2
10. West Virginia	4	436,059	— 29,293	6.2
11. Colorado	5	440,852	— 24,500	5.2
12. Arizona	4	443,121	— 22,231	4.7
13. Mississippi	5	443,382	— 21,970	4.7
14. Vermont	1	444,732	— 20,620	4.4
15. Kansas	5	449,814	— 15,538	3.3
16. Florida	15	452,630	— 12,722	2.7
17. Louisiana	8	455,398	— 9,954	2.1
18. Georgia	10	458,958	— 6,394	1.3
19. Kentucky	7	459,902	— 5,450	1.1
20. North Carolina	11	462,005	— 3,347	0.7
21. Illinois	24	463,082	— 2,270	0.4
22. Ohio	23	463,131	— 2,221	0.4
23. California	43	464,026	— 1,326	0.2
24. Virginia	10	464,849	— 503	0.1
25. New York	39	466,429	1,077	.2
26. Texas	24	466,530	1,178	.2
27. Michigan	19	467,110	1,758	.3
28. Missouri	10	467,740	2,388	.5

State	Number of Districts	"Ideal" District	Deviation from National "Ideal" District	Percentage Variation
Iowa	6	470,840	5,488	1.18
Pennsylvania	25	471,756	6,404	1.38
Indiana	11	472,152	6,800	1.46
Massachusetts	12	474,098	8,746	1.88
Rhode Island	2	474,862	9,510	2.04
Minnesota	8	475,634	10,282	2.21
New Jersey	15	477,878	12,526	2.69
Arkansas	4	480,824	15,472	3.32
Washington	7	487,024	21,672	4.66
Nevada	1	488,738	23,386	5.03
Maryland	8	490,300	24,948	5.36
Tennessee	8	490,521	25,169	5.41
Wisconsin	9	490,881	25,529	5.49
Alabama	7	492,024	26,672	5.73
Nebraska	3	494,597	29,245	6.28
Maine	2	496,832	31,480	6.76
Connecticut	6	505,370	40,018	8.60
New Mexico	2	508,000	42,648	9.16
Oregon	4	522,846	57,494	12.35
Utah	2	529,637	64,285	13.81
Delaware	1	548,104	82,752	17.78
North Dakota	1	617,761	152,409	32.75

APPENDIX F

Table of Proportions of Population 18 Years Old and Over Texas Congressional Districts, 1960

Texas Congressional District	Population 18 and Over	Total Population	Percentage 18 and Over
1	159,140	245,942	64.71
2	257,339	420,402	61.69
3	189,351	293,942	64.42
4	146,008	216,371	67.48
5	603,661	951,527	63.44
6	164,198	248,149	66.17
7	174,994	265,629	65.88
8	339,549	568,193	59.76
9	305,552	498,775	61.26
10	230,692	353,454	65.27
11	211,448	322,484	65.57
12	340,091	538,495	63.16
13	216,678	326,781	66.31
14	310,453	539,262	57.57
15	276,131	515,716	53.54
16	331,801	573,438	57.86
17	191,235	287,889	66.43
18	225,430	363,596	62.00
19	253,985	424,774	59.79
20	413,899	687,151	60.23
21	172,275	262,742	65.57
22	427,111	674,965	63.28
State	5,941,021	9,579,677	62.02

Range—53.54 — 67.48 = 13.94%

(Source: U. S. Bureau of the Census, Congressional District Data Book, (Districts of the 88th Congress), Washington (1963) pp. 483-4, 492-3.)

APPENDIX G

IN THE
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CIVIL ACTION NO. CA-3-5202-D
(Three Judge Court)

DAN WEISER, ET AL.,
Plaintiffs

v.

THE HONORABLE BOB BULLOCK,
SECRETARY OF STATE OF THE STATE
OF TEXAS,
Defendant

[filed March 21, 1972]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

I.

Notice is hereby given that Bob Bullock, Secretary of State of the State of Texas, the Defendant above named, acting by and through Crawford C. Martin, Attorney General of Texas, hereby appeals to the Supreme Court of the United States from the Final Judgment of Injunction entered by the United States District Court for the Northern District of Texas, Dallas

Division, on January 22, 1972, Civil Action No. CA-3-5202-D.

This appeal is taken pursuant to 28 U.S.C. § 1253.

Respectfully submitted,

CRAWFORD C. MARTIN
Attorney General of Texas

SAMUEL D. MCDANIEL
Staff Legal Assistant

Attorneys for Bob Bullock,
Secretary of State of the State
of Texas, Defendant
P. O. Box 12548, Capitol Station
Austin, Texas 78711

PROOF OF SERVICE

I, Samuel D. McDaniel, one of the attorneys for Bob Bullock, Secretary of State of the State of Texas, Defendant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 21st day of March, 1972, I served copies of the foregoing Notice of Appeal to the Supreme Court of the United States on the several parties thereto, as follows:

1. On Plaintiffs, Dan Weiser, Donald Coleman, John L. Edwards, Hugh Elliott, John W. Fletcher, John R. Karr, Joyce V. Karr, Benjamin Newcomb, Norma Palmer, Marvin Zimet, by mailing a copy in a duly addressed envelope, with air mail postage prepaid, to their attorneys of record, Lawrence Fischman and David H. Rosenberg, Fischman, Rosenberg, Kasmir & Preston, 601 Kirby Building, 1509 Main Street, Dallas, Texas 75201.

2. On Intervenors, by mailing a copy in a duly addressed envelope, with air mail postage pre-

paid, to their attorney of record, Nathan Eason, 400 Alamo National Building, San Antonio, Texas 78205.

3. On Amicus Curiae, Senator Lloyd M. Bentsen, by mailing a copy in a duly addressed envelope, with air mail postage prepaid, to his attorney of record, Charles L. Black, Jr., 169 Bishop Street, New Haven, Connecticut 06511.

SAMUEL D. MCDANIEL
Staff Legal Assistant
P. O. Box 12548, Capitol Station
Austin, Texas 78711

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CIVIL ACTION NO. CA-3-5202-D
(Three Judge Court)

DAN WEISER, ET AL.,

Plaintiffs

v.

THE HONORABLE BOB BULLOCK, SECRETARY OF STATE OF THE STATE OF TEXAS,

Defendant

[filed March 21, 1972]

DESIGNATION AND CERTIFICATION OF RECORD

The Clerk of the United States District Court for the Northern District of Texas, Dallas Division, is hereby requested to prepare and certify a transcript of the entire record in this cause for transmission to the Clerk of the Supreme Court of the United States in accordance with Rule 12 of the Rules of the United States Supreme Court.

Respectfully submitted,

CRAWFORD C. MARTIN
Attorney General of Texas
SAMUEL D. MCDANIEL
Staff Legal Assistant
Attorneys for Bob Bullock,
Secretary of State of the State
of Texas, Defendant
P. O. Box 12548, Capitol Station
Austin, Texas 78711

SEP 9 1972

MICHAEL RODAK JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1971

NO. 71-1623

BOB BULLOCK, SECRETARY OF STATE OF TEXAS,

Appellant

v.

DAN WEISER, DONALD COLEMAN, JOHN L. EDWARDS, HUGH ELLIOT, JOHN W. FLETCHER, JOHN R. KARR, JOYCE V. KARR, BENJAMIN NEWCOMB, NORMA PALMER AND MARVIN ZIMET,

Appellees

APPELLANT'S REPLY TO APPELLEES' MOTION TO DISMISS OR AFFIRM

CRAWFORD C. MARTIN
Attorney General of Texas
SAMUEL D. McDANIEL
Staff Legal Assistant
JAMES QUICK
Assistant Attorney General
P. O. Box 12548
Austin, Texas 78711
CHARLES L. BLACK, JR.
169 Bishop Street
New Haven, Connecticut 06511

September 1972

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1971

NO. 71-1623

BOB BULLOCK, SECRETARY OF STATE OF TEXAS,

Appellant

v.

DAN WEISER, DONALD COLEMAN, JOHN L. EDWARDS, HUGH ELLIOT, JOHN W. FLETCHER, JOHN R. KARR, JOYCE V. KARR, BENJAMIN NEWCOMB, NORMA PALMER AND MARVIN ZIMET,

Appellees

APPELLANT'S REPLY TO APPELLEES' MOTION TO DISMISS OR AFFIRM

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

Appellant will herein make brief reply to certain portions of appellees' Motion to Dismiss or Affirm. These points of reply will be numbered as appellees have numbered their Points in their Section entitled "Argument and Authorities".

(1)

Of the twelve points appellees refer to as "incontrovertibly established" (Motion to Dismiss or Affirm, pp. 2-5), Numbers (2), (3), (6), (7), (10), (11) and (12) are so evidently innocuous that appellant is entirely at a loss to know why they are set forth. Number

(1), p. 3, raises difficult questions of law and fact, not suitable for discussion at this time, such as the question whether a possible mistake of law on the part of some legislator or legislators, whether or not shown to have been acted on, vitiates this bill; appellant concedes nothing as to this point number (1). Points (4) and (5) raise issues of fact and very important issues of law never decided by this Court: *Ely v. Klahr*, 403 U.S. 108 (1971), relied on by appellees, carefully signals reservation of these extremely important issues: see 403 U.S. at 112, n. 5; it should be pointed out again, moreover, that there is no showing in this Record of any casual connection between concern for constituency-incumbent relations and any population variancy. As to points number (8) and (9), they are significant only if *any* rejection of *any* lower-deviation bill *ipso facto* voids the bill adopted; only this Court, after full consideration, can say whether such a mechanical and Draconic rule is the law. (It is to be noted here that, after explicitly disclaiming reliance on the claim of a 4.9% variation in the Legislature's bill (Transcript of Argument in the District Court, pp. 10-11), the appellees reintroduce this figure: see Motion to Dismiss or Affirm, p. 4, n. 1).

The short of the matter at this time is this: Senate Bill One, invalidated by the court below on mere citation of *Kirkpatrick v. Preisler*, 394 U.S. 526 (1969), shows an average variation from "ideal" of .745%, a maximum up-and-down variation of 4.1%, and a largest-to-smallest district ratio of 1:1.04. If as tight a fit as that is to be held *per se* void *solely* on the authority of *Kirkpatrick*—a case whose Record and Findings of Fact established definite and conscious intent to maximize rural over-representation—then it ought to be this Court that says so, after full consideration of so grave a step.

(2)

Appellees' second heading promises by its caption to answer appellant's contention that the *Kirkpatrick* rule ought to be receded from. But nothing in the body of the argument meets or even purports to meet any of the arguments made in appellant's Jurisdictional Statement, as a quick eye-comparison will easily show.

Quite surprisingly, appellees say, in this last paragraph under this Point:

> "*The debasement of the vote is of secondary importance.* It is the calculated, foreseeable consequence of ". . . the approach to redistricting . ." which, under all the evidence was (1) to protect incumbents (the "incumbency factor"; or euphemistically, "maintenance of constituency — congressman relations"); (2) to choose who among them would be elected to fill a vacancy; and (3) to preserve geo-political lines." Motion to Dismiss or Affirm, p. 9. [Emphasis supplied]

This paragraph foreshadows an entirely new theory —one that cries out for examination in this Court. This lawsuit—having been brought, pleaded, briefed and argued on a theory of "debasement of the vote" *and on that theory alone*—seems to be turning into something else. Appellant will not try to sketch what that something else may be, but submits that there could be no question more evidently substantial than the question whether we have come from *Baker v. Carr*, 369 U.S. 186 (1962) to a point where "debasement of the vote" is not even of primary importance.

(3)

As to their Point (3), appellees are in a most difficult position. At the trial and argument below, Plan C, the one adopted by the District Court, was never mentioned by them, nor is there a scintilla of evidence in

the whole Record bearing on the desirability of Plan C. At the trial and argument, on the other hand, appellees several times recommended the adoption of their Plan B, recommending it *precisely because* it rather closely followed the Legislature's Plan. (*Transcript*, pp. 25, 27, 39, 79)

Now appellees defend Plan C, seemingly on the ground that it does *not* follow the Legislature's judgments as closely as possible, but departs from them radically:

> "*This faithful adherence to the Legislative intent may well have been the vice* that precluded the adoption of Plan B, even conditionally; and compelled the Court to conclude . . . "that Plan C best effectuates the principal of 'one man, one vote' enunciated by the Supreme Court." Motion to Dismiss or Affirm, p. 10. [Emphasis supplied]

If faithful adherence to the Legislature's intent has become a *vice*, to be avoided even when population equality—the *only* constitutional value hitherto enunciated—is not thereby served, we have somehow entered a very new world, wherein we need the most authoritative guidance.

CONCLUSION

Appellees' Motion in no way meets appellant's contentions. Instead, in the respects indicated, it constitutes an additional demonstration of the need for a searching examination in this Court of the theoretical progression which has unanticipatedly led to the application of so drastic a remedy as the one administered in this case, to redress "injuries" which no one can really believe are injurious to any person or class.

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IN THE

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OCTOBER TERM, 1972

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Appellant

v.

DAN WEISER, *et al.*,

Appellees

On Appeal from the United States District Court
for the Northern District of Texas
Dallas Division

APPELLANT'S BRIEF ON THE MERITS

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OPINION BELOW

The opinion and orders of the District Court for the Northern District of Texas are not yet reported. The opinion and orders are attached to the appellant's Jurisdictional Statement as Appendix A. The order of this Court staying the said judgment, on application by appellant to Mr. Justice Powell, by him referred to the Court, is reported at 404 U.S. 1065, 92 S. Ct. 750 (January 27, 1972). This Court's denial of the motions of appellees to advance and expedite and to dispense with printing is reported at 405 U.S. 912, 92 S. Ct. 928 (February 22, 1972).

JURISDICTION

The action below was brought to enjoin the enforcement of a statute of the State of Texas, Senate Bill One, Tex. Acts, 62d Leg., 1st C. S. 1971, ch. 12, p. 38, and jurisdiction of the three-judge District Court below was invoked under Title 28 of the United States Code, Sections 1343 and 2281. The jurisdiction of this Court to review on appeal the judgment of the District Court is founded on 28 United States Code, Sections 1253 and 2101(b).

This Court noted probable jurisdiction on October 24, 1972.

QUESTIONS PRESENTED

1. Whether the requirement of near-exact arithmetical equality in Congressional District populations, as set out in the case of *Kirkpatrick* v. *Preisler*, 394 U.S. 526 (1969), ought to be revised, so as to recognize a reasonable latitude sufficient to cover the small variations in this case (either with or without a stated definite percentage of such permitted latitude).

2. Whether, if the rule of *Kirkpatrick* be not modified, that case can sensibly be distinguished from the present case, on the grounds that positive *mala fides* was proved and found in *Kirkpatrick* and that the county-integrity justification in that case was known to be sham.

3. Whether the court below (even assuming a negative answer to each of the above questions) acted improperly and without warrant of law in ordering into effect the districting plan it incorporated into its opinion "as the plan of this Court for the congressional districts of the State of Texas . . ."

STATUTE AND CONSTITUTIONAL PROVISION INVOLVED

The statute involved is Senate Bill One, Tex. Acts, 62d Leg., 1st C. S., 1971, ch. 12, p. 38, a copy of which, with map and table of variations, is attached as Appendix B to appellant's Jurisdictional Statement herein.

The Constitutional provision involved is Article I, § 2, in part, as follows:

Article I.

. . . . .

"Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature. . . .

. . . . .

"Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one,

Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three."

. . . . .

STATEMENT

On June 17, 1971, the Governor of Texas signed into law Senate Bill One (Tex. Acts, 62d Leg., 1st C.S. ch. 12, p. 38, hereinafter referred to as S.B.1), a measure dividing the State of Texas into twenty-four Congressional Districts for the ensuing decennium. Summarily, this Act allowed population variations (from 1970 census count) of +2.43% for the 13th District and −1.7% for the 15th District, making a total up-and-down maximum variation of 4.1%, based on the state "ideal" district, and placing the least and most populous districts in a ratio of 1:1.04. (A. 6-7 (Plaintiffs' Complaint); A. 317) The average variation from "ideal", for all 24 districts, was .745%. (Maps and deviation tables for this and for the appellees' two submitted plans are in appellant's Jurisdictional Statement herein, at pp. 45B-49D thereof.)

On October 19, 1971, plaintiff-appellees (residents of the 6th, 13th, 16th and 19th Districts) filed their complaint (A. 1-11) against the appellant herein, Secretary of State of Texas and chief election official thereof, alleging violation of their rights under Article I of the Constitution of the United States, and the Equal Protection Clause of the Fourteenth Amendment. They asked an injunction against holding of any election under S.B.1 and an order directing the Legislature to enact a new bill, and in the event this was not done, that a plan submitted by them and appended to their complaint be ordered into effect, or, in the alternative, that an at-large election be ordered. The plan then submitted is hereinafter referred to as Plan B; a map and table of variations in this Plan are contained in appellant's Jurisdictional Statement herein, at pp.

46C-47C. These maps show that Plan B differs from S.B.1 in that Plan B cuts some eighteen counties more than that Act.

Appellant's answer in effect denied violation of appellees' rights by S.B.1. A three-judge district court was convened to hear the case. On January 22, 1972, Van Henry Archer, designated in his complaint-in-intervention as "duly elected Chairman of the Bexar County Republican Party," and others, filed a complaint-in-intervention, joining appellees in their general position, but proposing another Plan, containing a deviation "of only two percent" (A. 73, plaintiff-intervenors complaint).

On January 10, 1972, plaintiffs filed an amended complaint, substantially similar to their original complaint, except that another plan, hereinafter referred to as Plan C, was tendered, though Plan B was not abandoned. A map and variations for Plan C are set out in appellant's Jurisdictional Statement herein, at pp. 48D-49D.

This Plan C provided for population variances *greater* than Plan B in 14 Districts, equal to Plan B in 8 Districts, and less than Plan B in only 2 Districts, in one of these by the amount of four persons. The maximum variation of Plan C is almost exactly five times the maximum variation in Plan B (13th District).

On December 7, 1971 and January 14, 1972, a pretrial conference was held, and a pretrial order was entered wherein "Plaintiffs' Claims" were narrowed to those under Article I, the 14th Amendment claim not appearing (A. 75-76). Depositions were meanwhile being taken from persons active in the passage of S.B.1 through the Legislature (A. 80-315).

On January 21, 1972, a "trial" was held, which ac-

tually consisted of argument (A. 315-323), the case being by stipulation tried on the above-mentioned depositions.

On January 22, 1972, twelve days after the filing of appellees' amended complaint (wherein Plan C was first presented), the court below, in a three-page *per curiam* opinion, declared S.B.1 unconstitutional, enjoined elections under it, and adopted appellees' Plan C as ". . . the plan of this Court for the congressional districts of the State of Texas. . . ." The court's entire rationale for the adoption of Plan C was that it was "significantly more compact and contiguous than" the other Plans. (All Districts in all the Plans are actually contiguous.)

The District Court's decree provided for reconsideration if the Legislature devised a new plan, but the Governor refused to call a special session.

This Court granted a stay of this judgment, on January 27, 1972. (See 92 S. Ct. 750.)

There are no "findings of fact" in the opinion of the court below. Evidence taken in the cause consisted in depositions of several legislative members, two clerks, and the Lieutenant Governor, concerning the process leading to the passage of S.B.1. In the absence of "findings of fact" to which specific comment might be addressed, the upshot of this testimony is difficult to summarize without argumentativeness; appellant finds in it no probative evidence of impropriety or bad faith, and must necessarily leave to appellees the pointing-out of such evidence, if in their view it exists.

Testimony clearly shows a concern on the part of those legislators principally active in the apportionment process for the maintenance where possible of constituency-Congressman relations and of seniority

deemed valuable to the State (*E.g.*, A. 80-81, 84, 96-97, 108, 141). While the bill was pending, certain of its legislative managers went to Washington to discuss districting with Congressmen (A. 80-81, 84, 96-97, 108, 141).

There is no evidence in the testimony of any causal connection between this concern and any of the small variations from population in S.B.1. There is affirmative and unrebutted testimony to the effect that this concern had no ideological or partisan character (A. 186-7; see also 187-88, 238, 266-267). Plaintiff's plans B and C cut many more counties than does S.B.1, and there is testimonial evidence that the legislative leaders involved desired to respect county lines where possible (A. 92, see also 251, and statement of appellees' counsel on oral argument, A. 321). There is evidence that some legislators took into account a belief that the relative populousness of West Texas would probably continue to decline (A. 90, 226, 248); the three districts showing more than 2% variance are in that section.

The record contains no evidence concerning the practicality or wisdom of either of plaintiffs' submitted plans, including Plan C, the one adopted by the court below; almost all the testimony in the case had been taken before Plan C first appeared in appellees' Amended Complaint; appellees did not, at the January 21 "trial", advocate adoption of Plan C, or even mention it, but rather advocated the adoption of their Plan B (A. 317 (twice), 319 (twice), 321, 322).

SUMMARY OF ARGUMENT

The case of *Kirkpatrick* v. *Preisler*, 394 U.S. 526 (1969), the sole authority relied on by the court below in invalidating this Congressional districting plan,

laid down a standard of strictest arithmetic equality in Congressional district populations, attributing to small variations a decisive constitutional significance. Appellant's first and principal contention will be that the substantive constitutional law of Congressional districting does not support the attribution of significance to small variations such as those found in the present case, and that the rule of *Kirkpatrick* ought to be modified, not by introducing a *de minimis* concept applicable to substantive constitutional violations, but by recognition that the substantive law of Congressional districting cannot find any violation at all when very small variations are shown.

The historical evidence affirmatively and unambiguously shows that the Framers, concerned as they were with substantial and approximate proportionality of constituencies to representatives, were unconcerned with precise arithmetical equality. The federal plan for Congress—on analogy with which the leading Congressional district case, *Wesberry* v. *Sanders*, 376 U.S. 1 (1964), was decided—cannot serve as the foundation for any analogic or implicational argument leading to the requirement of arithmetical exactness, for it does not itself seek that goal, and never has. That requirement, moreover, is a requirement that a futile thing be done, since the nature of the data—arithmetical and political—upon which the exact-equality requirement can operate results in there being no reliable correlation at all between small census-count variances and either voting power narrowly considered, or fair and effective representation.

On the substantive merits, therefore, *Kirkpatrick* goes too far. There are present none of the factors which may protect an erroneous precedent from modification. *Kirkpatrick* ought therefore to be modified, to

the extent of allowing a reasonable leeway to state districting bodies. Appellant will further suggest that this Court might warrantably select, as a plainly needful remedial convenience, a fixed percentage of variation from census-count equality, permissible without inquiry (except, of course, for inquiry into violation of separate constitutional norms such as the command against racial discrimination).

At the same time, appellant will urge that, if *Kirkpatrick* is to stand unmodified, this case may sensibly be distinguished from *Kirkpatrick*. In *Kirkpatrick*, the issue of "good faith" came up in a context of specific findings, supported by evidence, of "bad faith" in the central sense of that phrase—intentional and stubborn perpetuation of overrepresentation for a given interest. Nothing of the sort is found here. In *Kirkpatrick*, the county-integrity justification was a proven sham; here, it is not shown or suggested to be anything but *bona fide*, and this case should not be held to be ruled by words spoken in a case where that defense was known to be sham.

Finally, even if all the foregoing contentions be rejected, appellant will contend that this case must be reversed, because the relief awarded was wrong on the merits and was chosen after a process of consideration well below the standard that ought to be set. After the court below had determined that the Legislature's plan was to be held invalid, it should have invited proposals for relief, from defendants and from the public. Even if it were proper for the court to limit its choice of relief to plans previously submitted by plaintiffs, the court should have chosen the one that most closely followed the Legislature's determinations, which was also the only plan the plaintiffs below had urged be adopted, and which actually had smaller population variations

than the plan chosen. Instead, the court, without adequate notice or consideration, decreed a plan radically disregarding the Legislature's determinations, even where these could constitutionally have been followed.

ARGUMENT

I.

The standard of strict arithmetical equality in Congressional districts, enunciated in Kirkpatrick *v.* Preisler, *ought to be reconsidered and revised. Appellant's submission is that that standard is not warranted by the substantive law of Congressional districting, and is (as the present case itself illustrates) productive of a highly undesirable involvement of the national judicial branch in the details of the districting process. The rationally derivable substantive law of Congressional districting should be held to contain a term of reasonable latitude, within which the Texas Legislature's plan in this case evidently falls; this Court, moreover, might appropriately set up, as a plainly needful remedial convenience, a fixed standard of permissible deviation from equality of census figures.*

Introductory

The maximum deviations in the Legislature's districting plan in this case (Senate Bill One) are 2.43% over and 1.7% under; the highest and lowest districts stand in a ratio of 1:1.04; the average deviation is .745%—all calculated on the census count of April 1, 1970. So close a fit can be condemned only under a rule of the strictest arithmetical equality in census population—a rule associated with the case of *Kirkpatrick* v. *Preisler*, 394 U.S. 526 (1969). Appellant will submit

(in Point II hereof) that a reading of the *Kirkpatrick* case is possible (and desirable, if the holding is to stand) which would take the case at bar out of the *Kirkpatrick* rule. On any reading, however, *Kirkpatrick* attributes very large and often decisive significance to quite small district inequalities. It is appellant's submission at this point that this attribution is not warranted by law, and that *Kirkpatrick* ought at this time to be receded from by a short distance.

Appellant is *not* contending here for the indulgence of a *de minimis* rule with respect to established substantive violation of constitutional rights. Appellant rather contends that, on full reconsideration, the *substantive constitutional law* of Congressional districting ought to be held to be such that a plaintiff who shows a few percentage points variation among districts has not thereby made out any substantive case of violation of his constitutional rights.

The contention that the *Kirkpatrick* rule should be modified will be supported by the following arguments:

A. *On the merits,* Kirkpatrick *is in error, as to its exact arithmetical standard.*

1. The underlying and expressed rationale of *Wesberry* v. *Sanders,* 376 U.S. 1 (1964) the leading and rationally definitory case on Congressional districting, reaches to support of a doctrine of approximate and reasonable equality in district census populations but not to support of a doctrine of close arithmetical equality.

2. The insistence upon tight arithmetical equality is futile, being instrumental to no comprehensible end, for two broad reasons:

(a) The nature of the numerical data, upon

which alone the doctrine of tight arithmetical equality can operate and be meaningful, is such as to make that doctrine meaningless as a protection against *dilution or debasement of the vote*, the evil sought to be prevented by the apportionment decisions, so that the command of exact arithmetical equality is a command that an idle or at most an unclearly and ineffectively symbolic thing be done, at great trouble and cost to real and substantial values.

(b) The relations between voting strength and political influence and power are highly complex and indirect; though this Court probably ought not to elaborate and impose an orthodox theory of "representation" (there appearing to be no warrant in law for such elaboration and no authoritative scientific or philosophic corpus to which law may look for supplying one) the requirement of numerical equality in constituency numbers ought to be tempered by an awareness that such equality bears only a rough relation to the goal of fair and effective representation, while some small flexibility as to numerical equality may confer on legislators, or on any other authorities undertaking constituency-formation, a corresponding freedom to experiment and to give weight to other factors affecting representation.

3. The above Points 1 and 2 are interconnected, and reinforce one another.

B. *There are present none of the factors (such as action in reliance, the accrual of vested rights, or the repeated and matured consideration exhibited by a long line of authority) that legitimately may protect*

from overruling or modification a precedent judged erroneous; on the other hand, the Kirkpatrick *rule is by no means evidently innocuous, but seems to be productive of considerable political harm, so that the case's rule of strict arithmetical equality, if erroneous, ought at this time to be modified.*

C. *As a matter of remedy, this Court might legitimately select a numerical standard of permissible variation, thus clarifying for legislatures the requirement under which they operate, and (in high probability) greatly diminishing the flow of districting and apportionment cases to the courts.*

A. The strict arithmetical equality rule of Kirkpatrick is substantively in error.

1.

The rationale of Wesberry *v.* Sanders *supports only a requirement of reasonable approximation to equality among congressional districts.*

There is nothing in the Constitutional text about Congressional districting. Like many other important constitutional doctrines now of unquestioned acceptance (see, *e.g.*, *McCulloch* v. *Maryland*, 4 Wheat. (17 U.S.) 316 (1819); *Brown* v. *Maryland*, 12 Wheat. (25 U.S.) 419 (1827); *Crandall* v. *Nevada*, 6 Wall. (73 U.S.) 35 (1868), the doctrine of *Wesberry* v. *Sanders* had to be rested, and was quite explicitly rested, on *implication*—in this case implication from the State-representation plan that *is* ordained by the Constitution—the implication being validated by reference to utterances from the time of the formation of the Constitution, and being used, in turn, to give concrete meaning to the intrinsically ambiguous phrase, ". . . chosen . . . by the People. . .", Constitution, Article I,

§ 2. These three strands of argument—the implica-tional, the historical and the textual—intertwine and reinforce one another. Together, they fully support the holding in *Wesberry*, which was, on the facts, that "*gross*" disproportion of population in Congressional districts, with "*widely varied* numbers of inhabitants", violates the Constitution, 376 U.S. at 7, 8 [Emphasis supplied]. Such disproportion is functionally inharmonious with the federal scheme for construction of the popular branch of Congress, utterances around 1787 by responsible persons (found both in the *Wesberry* majority opinion, 376 U.S. at 11-18, and in Mr. Justice Harlan's dissenting opinion, 376 U.S. at 31-41) show that such persons would in all probability have regarded as abusive such maldistricting as *Wesberry* condemned; given these facts, election on the basis of grossly disproportionate districts may be said not to be election ". . . by the People", within the fair meaning of the Constitutional text. But none of these three strands of argument, nor all together, can support a rule of very strict arithmetical equality among districts.

There was little discussion of equality in districting at the Constitutional Convention, since districting is not even a constitutional requirement and it was never suggested that it be made such. The form of inference as to the Framers' intent must then be that equality among districts is a requirement somehow connected with the requirement of population proportionality among the States in respect of their Congressional representation. (The *Wesberry* Court clearly recognized this, condemning the plan before it as one which would "cast aside" and "defeat" the principle of the federal plan, 376 U.S. at 8, 14.) It is crucial therefore (unless the inference is to rise higher than its source) to ask

what the Framers meant when they agreed upon Congressional representation proportioned to the number of inhabitants as amongst the States. Did they mean very tight arithmetical equality, or did they mean a reasonable approximation to equality?

By far the most reliable document for registering the intent of the Framers is the Constitution itself. The text of Article I, § 2, goes a long way toward establishing an insistence on what was in those times looked on as substantial equality, coupled with an indifference to very tight arithmetical proportionality. Here may be listed:

(1) The inclusion of three-fifths of the voteless and voiceless slaves in the population count. This decidedly skewed, though it did not destroy, proportionality amongst constituent populations.

(2) The provision for no oftener than *decennial* enumeration (and, inferentially, apportionment) in the face of the fact that rapid growth in population in the West was plainly expected strongly to continue. I Farrand (ed.), RECORDS OF THE FEDERAL CONVENTION OF 1787, 560, 571 (rev. ed. 1937).

(3) The provision that each State should have at least one Representative, regardless of its population. The entire absence of objection to this provision shows how little concerned the Framers were with exact proportionality.

(4) The employment of the formula, "The Number of Representatives shall not exceed one for every thirty thousand . . .", a rough-and-ready prescription hardly consonant with concern about exact proportionality.

(5) The interim apportionment actually made, State by State, in Article I, § 2, an apportionment which cannot have been thought by anyone to be more than roughly proportional to numbers. "These numbers were worked out by two committees, whose members made population (at which they could only guess) the principal criterion, but also gave some weight to wealth and apparent rate of growth." Rossiter, 1787: THE GRAND CONVENTION 186 fn. (1966). The Convention had estimates of population available, but it departed quite substantially from even the representative proportions indicated by these. Massachusetts, *e.g.*, would have had 9.1 representatives out of the 65, on a strict population basis resting on the estimates, but actually got 8. South Carolina was entitled to 3.8, on an arithmetical basis, but got 5. "It is obvious that, while mathematics played a part, it was not the source of all decisions." Alterman, COUNTING PEOPLE, 187-189 (1969). Is it so much as possible that those who did this would be concerned with arithmetical exactness as to district populations?

(6) The apportioning of Representatives State by State, with no overlapping or sharing. This was not strictly necessary; it would have been entirely possible to make provision for the sharing of a representative, or for districts overlapping State lines, a step which would have made possible an enormously closer approximation to population equality. That such a step was never thought of shows how far the Framers were from regarding exact arithmetical equality as a prime value. (To the modern mind, accustomed to the idea of discretely separate state identity, the sharing ar-

rangement may seem unthinkable. But the Framers' conceptions were not necessarily thus confined. For example, it was actually suggested, by Brearly of New Jersey, that State boundaries be totally redrawn, to equalize numbers, I Farrand (ed.), RECORDS OF THE FEDERAL CONVENTION OF 1787, 177 (Rev. ed. 1937); no less a personage than Franklin endorsed this scheme in principle, I *ib.* 199. In the end it got nowhere, but the fact that it could be put forward at all shows how radically the delegates were capable of thinking. Had the sharing of representatives been instrumental to any end they cared about in the least, that sharing might well have been suggested.)

To these textual points may be added the underlying fact, against which § 2 must be read, that tight arithmetical proportionality of representation to population was quite impossible unless a very large House of Representatives was to be brought into being, a step evidently not contemplated. (Madison, indeed, moved to double the numbers in the first apportionment, State by State, but this would not have produced a closer fit of representatives to population. It is, in fact, highly significant that Madison, believing the House should be larger, did not so much as notice that that enlargement could have been made the means of producing closer proportionality. Instead, he moved a mere doubling, State by State. In the debate on the motion, the proportionality problem was not mentioned. In any case, the motion lost, 9-2. I Farrand, *op. cit. supra*, 568-570.)

It must also be noted that, insofar as proportionality is tied to *voting*, or to the dilution of the *vote*, the whole structure of Section 2 evidences very plainly a lack of concern for exact equality; the proportionality or-

dained, rough as it was, was based on *population*, while the matter of eligibility to vote was left to the States, and criteria varied widely. Chute, THE FIRST LIBERTY, *passim* (1969) Even exactly similar rules of eligibility could result in different proportions of voters in equal populations; one constant requirement, *e.g.*, was male suffrage, but the First Census shows significant variation in male-female ratios among the States. Vermont, *e.g.*, had nearly 45,000 free white males, and only some 40,500 free white females, while Connecticut had around 115,000 males and 117,000 females. Stewart, YOUR 1970 CENSUS 5 (1969).

Further, and tellingly, there was never a final agreement amongst the Framers as to whether even population was being used for its own sake or as a parameter for wealth. This double functioning of the population standard is very clear in the debates of July 11-13, in the course of which no fewer than five delegates (Mason, Sherman, Madison, Gorham, Johnson) made the point that population rather accurately measured wealth, an argument which made it possible for population to be agreed upon as a proper basis by both sides in the population-wealth debate. I Farrand, *op. cit. supra*, 579, 582, 585, 587, 593. See also FEDERALIST No. 54.

Nothing in the debates or other records fails to chime with the conclusion that the Framers cared a great deal about approximate or substantial proportionality of representatives to numbers, but not at all about arithmetically exact proportionality. The utterances collected in the opinions of *Wesberry* v. *Sanders* fully bear out this statement; interest is there shown to have centered on avoiding the "vicious representation" of Britain, where London and Old Sarum were represented alike, with a population ratio of many thousands to one,

376 U.S. at 14-15. Not one word spoken then can fairly be taken to indicate a concern with arithmetical exactness to the *Kirkpatrick* degree of fineness.

If, then, there is no direct and explicit answer in the historical materials to the question whether arithmetically exact proportionality was of interest to the Framers, it is submitted that this is almost certainly because they never thought of such a thing. Directed to them, the question is an anachronism. All the indirect evidence, whether of deed or utterance, tends to the conclusion that they would have dismissed as quite trivial such inequalities as appear in this case, and would have been only puzzled by the assertion that these very small inequalities were interdicted by the substantive law of their Constitution. The evidence unambiguously shows that they were unconcerned about minor disproportionalities among the States, while at the same time being crucially concerned about an approximation to correct proportionality. Unless it somewhere jumps the track, an inference from their "intent" to the proprieties of district equalization must take account of both these attitudes.

It is interesting to go on and see what the Second Congress did in apportioning on the First Census of 1790, for this tells us much as to what passed for a satisfactory approximation to equality in the minds on whose intent *Wesberry* is partly rested. The following short table tells the whole story:

State	Population Adjusted to 3/5 Formula	Number of Representatives	Number of Persons per Representative
Vermont	85,532.6	2	42,766.3
N. Hampshire	141,821.8	4	35,455.4
Maine Massachusetts	475,327.0	14	33,951.9
Rhode Island	68,445.8	2	34,222.9

Connecticut	236,840.4	7	33,834.3
New York	331,590.4	10	33,159.0
New Jersey	179,569.8	5	35,913.9
Pennsylvania	432,878.2	13	33,298.3
Delaware	55,539.2	1	55,539.2
Maryland	278,513.6	8	34,814.2
Virginia	630,559.2	19	33,187.3
Kentucky	68,705.0	2	34,352.5
N. Carolina	353,522.2	10	35,352.2
S. Carolina	206,235.4	6	34,372.5
Georgia	70,842.4	2	35,421.2
Total	3,615,923.0	105	34,437.4

(Calculations show a percentage range of deviation from national "ideal" district of 0.19% to 61.28%, with a median deviation (Georgia) of 2.86% and an average deviation of 7.61%.)

(Sources: Stewart, YOUR 1970 CENSUS 5 (1969); 1st Session, 2nd Congress, C.23, 1 Stat. 253.)

Clearly, what is happening here is the roughest approximation to equality. Each state is getting a representative for each full 33,000, with no allowance for fractions. Yet there is no record of any dissatisfaction with the resultant disparities.

There is, then, virtually conclusive evidence of the propositions (1) that the Framers were deeply concerned with approximate proportionality as among the States, and (2) that they were not concerned at all with exact proportionality. There is no evidence that they would have felt differently about district equalization, nor any reason why they should.

Insofar, however, as the rationale of *Wesberry* is *implicational*—rested, that is, on an analogy with the federal plan *as it now stands*, or on a judgment that district inequalities functionally defeat the ends of the federal plan—it is relevant to trace down to now the process of Congressional apportionment among the States, under the constitutional scheme. If we do this, we find that the federal scheme not only was in the be-

ginning but has always been and is today one which tolerates considerable variation in constituency population per Representative, without, so far as appellant is aware, any feeling that its root-principle is being violated.

As an example, using the 1970 Census, Oklahoma (with six Congressmen) has an "ideal" Congressional district of 426,542, while Connecticut (also with six Congressmen) has an "ideal" district of 505,370—a difference of some 79,000 *per district*, or more than 16% variation up and down from the average "ideal district" of the two States taken together, which happens to be close to the overall national "ideal district" of 465,352. Much wider divergences appear: Idaho (two Congressmen) has an "ideal" district of 356,504; Maine (also with two Congressmen) has an "ideal" district of 496,832. (All data on Congressional Districts, here and hereinafter, are from the pamphlet series, Bureau of the Census, CONGRESSIONAL DISTRICT DATA, DISTRICTS OF THE 93d CONGRESS (separate pamphlets for the separate States).)

Is it the case that anyone would say that Connecticut's Congressmen are not elected ". . . by the People . . ." (Art. I, § 2, a phrase heavily stressed in *Wesberry*) as much as Oklahoma's are elected "by the People"?

Appellant here reproduces a calculated tabulation of the range of variation, amongst the States, from the national "ideal district" (202,428,262 ÷ 435 = 465,352) according to the 1970 Census:

State	Number of Districts	"Ideal" District	Deviation from National "Ideal" District	Percentage Variation
1. Alaska	1	302,173	163,179	35.07
2. Wyoming	1	332,416	132,936	28.57

3. South Dakota	2	333,129	−132,223	28.4
4. Montana	2	347,205	−118,147	25.3
5. Idaho	2	356,504	−108,848	23.3
6. New Hampshire	2	368,841	− 96,511	20.7
7. Hawaii	2	384,957	− 80,395	17.2
8. Oklahoma	6	426,542	− 38,810	8.3
9. South Carolina	6	431,753	− 33,599	7.2
10. West Virginia	4	436,059	− 29,293	6.2
11. Colorado	5	440,852	− 24,500	5.2
12. Arizona	4	443,121	− 22,231	4.7
13. Mississippi	5	443,382	− 21,970	4.7
14. Vermont	1	444,732	− 20,620	4.4
15. Kansas	5	449,814	− 15,538	3.3
16. Florida	15	452,630	− 12,722	2.7
17. Louisiana	8	455,398	− 9,954	2.1
18. Georgia	10	458,958	− 6,394	1.3
19. Kentucky	7	459,902	− 5,450	1.1
20. North Carolina	11	462,005	− 3,347	0.7
21. Illinois	24	463,082	− 2,270	0.4
22. Ohio	23	463,131	− 2,221	0.4
23. California	43	464,026	− 1,326	0.2
24. Virginia	10	464,849	− 503	0.1
25. New York	39	466,429	1,077	.2
26. Texas	24	466,530	1,178	.2
27. Michigan	19	467,110	1,758	.3
28. Missouri	10	467,740	2,388	.5
29. Iowa	6	470,840	5,488	1.1
30. Pennsylvania	25	471,756	6,404	1.3
31. Indiana	11	472,152	6,800	1.4
32. Massachusetts	12	474,098	8,746	1.8
33. Rhode Island	2	474,862	9,510	2.0
34. Minnesota	8	475,634	10,282	2.2
35. New Jersey	15	477,878	12,526	2.6
36. Arkansas	4	480,824	15,472	3.3
37. Washington	7	487,024	21,672	4.6
38. Nevada	1	488,738	23,386	5.0
39. Maryland	8	490,300	24,948	5.3
40. Tennessee	8	490,521	25,169	5.4
41. Wisconsin	9	490,881	25,529	5.4
42. Alabama	7	492,024	26,672	5.7
43. Nebraska	3	494,597	29,245	6.2

Maine	2	496,832	31,480	6.76
Connecticut	6	505,370	40,018	8.60
New Mexico	2	508,000	42,648	9.16
Oregon	4	522,846	57,494	12.35
Utah	2	529,637	64,285	13.81
Delaware	1	548,104	82,752	17.78
North Dakota	1	617,761	152,409	32.75

These variations are enormous, but, as among the States, calculation shows that the average deviation is 7.79%, while the median deviation is 4.75%. This means that the "dilution" complained of in the present case (with a maximum deviation of 2.43%) is far less than the "dilution" as to either the average or the median State, measured against the national "ideal". Of course it is *possible* for intra-state districts to be made more nearly equal than these figures suggest; the question is not what is possible, but what is required by rationally derived law. If the requirement, as *Wesberry* v. *Sanders* very plainly shows, is derived from the nature of the federal scheme, and from what that scheme envisages as satisfying the phrase, "chosen . . . by the People," has there not occurred some departure from either logic or common sense, when a requirement of very strict intra-state equality is deduced from the intendment of a scheme which was never meant to bring about any more than approximate equality among the States, and which today, without complaint or apology or feel of wrong, produces only approximate equality among the States?

Since Wesberry rests in part on the highly reasonable proposition that election "by the People", Article I, § 2, entails at least some approach to equalizing district populations, light may be thrown on our question by a glance at concept and practice in other democratic nations. Britain set up a 25% leeway by statute, but found this not enough; Dixon, DEMOCRATIC REPRE-

SENTATION 91-94 (1968). (It is surely worth remark that this Court, in *Wesberry*, refers with apparent approval to the work of the British Boundary Commission *operating under these standards*, 376 U.S. at 15 n. 36.) Australia allows 20% leeway. Mayer (ed.) AUSTRALIAN POLITICS, A READER 147-148 (2d ed. 1967); Rawson, AUSTRALIA VOTES 60 (1961). West Germany (as to the district-based parts of its legislative representation) allows 33 1/3% by law, but tries to cut this to 25% or even 20%. Dixon, *op. cit. supra.*, 95. Appellant has found no foreign country among all those commonly classified as "democratic" wherein anything like close arithmetical equality of districts is enforced by constitution, by statute, by judicial rule, or by custom. In those countries having proportional representation, the system itself of course automatically produces an approximation to equality, rather than exact equality, for it can never be guaranteed that party-vote totals will neatly fall into numbers standing in such proportion to one another as to make possible an exactly proportioned division of the disposable seats.

Does it make sense to say that the British House of Commons is not elected "by the People"? When the Texas Legislature is summarily faulted for setting up a districting plan ten times as close to equality as the most that the Mother of Parliaments ever required of herself, and closer than is required in any foreign democratic country—and that not on any specific textual ground found in our Constitution, but solely on the ground of incompatibility with the democratic assumptions enshrined in the phrase "chosen . . . by the People"—do we not need to stop and ask who it is that is out of step?

(It is not responsive to say that factors exist in

other countries justifying variance—such as the British preference for "community" representation, see Dixon, *op. cit. supra*, 93-94; the *Kirkpatrick* rule ordains that no such factors shall have effect in the United States, whether they exist or not. As will be shown *infra*, II, B, the small population variations in this plan result from a preference for county integrity. That preference is just as real as the British preference for community representation, though the population variance concerned is many times less than those allowed in Britain.)

Neither from the federal plan, nor from any discernible and authoritative intentions surrounding its inception, nor from any other source, is it possible to deduce a requirement of strict arithmetical equality between districts in the same state. That requirement, then, has no warrantable place in the substantive law of Congressional districting, as declared and supported by *Wesberry* v. *Sanders*.

2.

The nature of the data on which the exact arithmetical standard can operate is such as to make that standard instrumental to no stateable end. Constitutional law does not command purposeless actions.

The plaintiff-appellees' Amended Complaint, in its Paragraph F(7), contains the following allegation: "That the vote of a voter in the Thirteenth (13th) District *is worth less than 96%* of the vote of a voter in the Twenty-second (22nd) District;" [Emphasis supplied].

It is submitted that not one reputable political scientist or philosopher, not one sagacious practicer of politics, could be found, who would regard that

sentence as conveying any truth about political power or influence in the real world. The sentence reads, with deference, like a rather successful attempt at satire. Yet it is upon the serious meaningfulness of such sentences that the whole doctrine of exact arithmetical equality has to rest; if such sentences are not meaningful, then the imposition upon State legislatures of a rule of exact arithmetical equality in Congressional district populations is an insistence upon something that bears no relation to the value sought to be protected, or to any value. It will be the contention here that such sentences are not meaningful, and that good law does not command an idle thing.

(a) *The figures upon which the exact arithmetical equality requirement can operate are so uncertainly related to equality in number of voters at the time of their voting as to make that requirement itself a mere futility.*

The appellant's submission here is that, between the 1970 census population in any District, and even the arithmetical "worth" of a vote in that District in any year in the decennium 1972-1982, there is no such correlation as to make exact equality in the former anything like a reliable indicator of equality in the latter. If this is right, then the plaintiff who alleges and proves a small district population inequality has failed to allege and prove facts which reliably ground *any* inference of dilution of the power of his vote. It is not that a shown violation is *de minimis*; it is that no violation is shown.

The rest of this subpoint rests on the proposition that, just as it has been said that the remedy for the ills of democracy is more democracy, so the remedy for the excesses of arithmetic is more arithmetic.

(i) Logically first, though of less importance than certain other factors shortly to be examined, is the fact that the census count itself is not wholly reliable. The best evidence seems to support the conclusion that this unreliability is greatest with respect to the enumeration of minority groups, which tend to be under-enumerated. (It is, indeed, this differential character which makes under-enumeration important here; if undercount were uniform, it could not affect proportions.)

"Never in American history, from colonial days to the present, has there been an accurate enumeration of the Negro people." Alterman, COUNTING PEOPLE 262 (1969). These words, fully backed up by the chapter in which they occur, were published just before the 1970 census. The same work tells us:

> "The most thorough analysis of the census of 1960 was made by the Bureau of the Census itself. The two men most directly responsible for it were Drs. Jacob S. Siegel and Melvin Zelnick, the latter now a professor at Johns Hopkins University. Their analysis showed that blacks had been underenumerated by 10.5 percent. Among Negro men aged 15 to 44 years, about every fifth one may have been omitted from the census." *Ib.*, 280

See also the concurring opinion of Mr. Justice Fortas in *Kirkpatrick* v. *Preisler*, 394, U.S. 526, 536, 539, n. 3 (1969).

The Census Bureau planned a great effort for 1970, to overcome this problem. But the chief of the Bureau's Population Division said, "no one can say whether any or all of these efforts will *reduce* the undercount of Negroes. I, myself, doubt they will." Alterman, *op. cit. supra*, 283. [Emphasis supplied.]

It is to be noted, in this utterance, that the best hoped for was a reduction in black undercount, not its

elimination, and that reduction starts at 10.5% (see the last paragraph but one, *supra*).

To the best of appellant's knowledge, no scientific evaluation of the 1970 Census, with respect to black or other minority undercount, has yet been completed. But it would be bold to presume, in the face of the above utterances, that the problem has been solved. If it has been reduced by half—an immense achievement—there is still an enormous undercount of blacks.

This bears on Texas, though Texas is only an example. About 12.5% of Texans counted in the 1970 Census were blacks. These citizens are very far from evenly distributed throughout the State; about 192,000 were counted in the 18th District (inner city Houston) as now constituted, and less than 3,000 in the 15th, with something like an even spread between these extremes. Bureau of the Census, CONGRESSIONAL DISTRICT DATA, DISTRICTS OF THE 93d CONGRESS, TEXAS, 8-10 (1972). Quite clearly, if there is an undercount in this group, it will have a highly differential impact through the State.

There exists, as one would expect, professional opinion that undercounting occurs among Mexican-Americans as well as among Blacks. See Pritzker and Rothwell, *Procedural Difficulties in Taking Past Censuses in Predominantly Negro, Puerto Rican and Mexican Areas*, in SOCIAL STATISTICS AND THE CITY (Heer, ed., 1968) at pp. 55, 71, 77, *et passim.*

Texas has a great many Mexican-Americans; the 1970 Census shows well over two million, or more than 18% of the population. This group also is distributed very unevenly throughout the State. These numbers have to be estimated by Spanish surnames, since the over-all census count reports them as "white." On this

surname basis, the range in Texas is from more than 88% (Planning Region 19) to less than 1% (Planning Region 5); Office of the Governor, Office of Information Services, SUMMARY, SELECTED DEMOGRAPHIC CHARACTERISTICS FROM CENSUS DATA — FOURTH COUNT (1972). Any undercounting as to these people would, to an unknown degree, vitiate equality of census count.

(ii) Census inaccuracy and undercount, though doubtless existing, are probably small compared to the next demographic fact to be mentioned: *There is a very considerable sectional variation in percentage of persons eighteen years old and over, and hence of persons potentially eligible to vote.* The defense of the rule of tight arithmetical equality in district *populations*, defended chiefly or entirely as a rule equalizing voting power, (*cf. Wesberry* v. *Sanders, supra, passim*, and see *Kirkpatrick* v. *Preisler, supra*, 394 U.S. at 527-8) has to meet this plain fact head on.

The percentages of age-eligible voters, as amongst Texas Congressional Districts, computed on figures in the CONGRESSIONAL DISTRICT DATA pamphlet cited above, are as follows:

1st	68%	13th	67%
2nd	66%	14th	61%
3rd	64%	15th	58%
4th	66%	16th	60%
5th	66%	17th	69%
6th	66%	18th	66%
7th	64%	19th	62%
8th	60%	20th	63%
9th	64%	21st	65%
10th	68%	22nd	61%
11th	69%	23rd	60%
12th	64%	24th	65%

The range is from 58% to 69%, a range nearer

thrice than twice as great as the maximum up-and-down variation complained of in this case.

Of course this phenomenon is not peculiar to Texas; it is not even at its most striking in Texas; its wide prevalence ought strongly to influence this Court's fashioning of a national rule for permissible district variation. A few scattered illustrations may be given:

> The 1st Alabama has 62% persons 18 and over; the 6th Alabama has 66%.
>
> The 1st Arkansas has 63%; the 3d Arkansas 69%.
>
> The 7th Illinois has 59%; the 9th Illinois has 78%. (This example may be singled out for amplification. These districts are two contiguous parts of the City of Chicago. As between themselves, they are apportioned to a very nice degree of equality; the 7th has 464,283, and the 9th has 463,991—a difference of 292 people! Yet the 7th has 275,147 people of an age eligible to vote, while the 9th has 364,054 people of an age eligible to vote!)
>
> The 1st Indiana has 62%; the 7th Indiana 69%.
>
> The 5th Massachusetts has 63%; the 8th Massachusetts 76%.

It is to be observed that these percentage differences are widened if translated into percentages of age-eligible voters—the relevant quantity if "dilution of the vote" is the thing to be avoided. The Alabama illustration (with one of the narrowest gaps among the examples given) exhibits a 4% variation if the reference is to total population, but something like an 8% difference if the average of age-eligibles is used as the reference. In the Illinois illustration, the difference in number of voting-age people is a difference

of some 28% of the average number of voting-age people in the two districts.

The following table gives the complete picture as to all multi-district States, on the percentage variation of age-eligibles as among the districts (all figures being calculated on the applicable counts in the Bureau of the Census. CONGRESSIONAL DISTRICT DATA, 93d CONGRESS, for the respective States):

State	Number of Districts	Minimum % 18 and over	Maximum% 18 and over	Percentage Range
Alabama	7	62	66	4
Arizona	4	62	66	4
Arkansas	4	63	69	6
California	43	58	81	23
Colorado	5	62	70	8
Connecticut	6	64	68	4
Florida	15	63	77	14
Georgia	10	62	68	6
Hawaii	2	60	69	9
Idaho	2	62	65	3
Illinois	24	58	78	20
Indiana	11	62	69	7
Iowa	6	63	67	4
Kansas	5	65	69	4
Kentucky	7	62	68	6
Louisiana	8	58	65	7
Maine	2	64	66	2
Maryland	8	63	69	6
Massachusetts	12	63	76	13
Michigan	19	59	68	9
Minnesota	8	61	72	11
Mississippi	5	61	63	2
Missouri	10	63	70	7
Montana	2	63	64	1
Nebraska	3	63	68	5
New Hampshire	2	65	66	1
New Jersey	15	63	72	9
New Mexico	2	59	61	2
New York	39	57	86	29
North Carolina	11	63	68	5

Ohio	23	61	68	7
Oklahoma	6	66	69	3
Oregon	4	65	68	3
Pennsylvania	25	62	73	11
Rhode Island	2	68	69	1
South Carolina	6	59	66	7
South Dakota	2	62	65	3
Tennessee	8	64	68	4
Texas	24	58	69	11
Utah	2	59	60	1
Virginia	10	62	68	6
Washington	7	64	71	7
West Virginia	4	65	68	3
Wisconsin	9	61	68	7

It is to be observed that only 12 of the 44 multi-district States show inter-district variation, in this one respect, significantly less than the approximately 4% up-and-down population variance in the present case. On the other hand, 26 states have 5% or more variation in numbers of age-eligibles. There are eleven States with age-eligible variations, among districts, more than twice as great as the total up-and-down variation in our S.B. 1!

In the light of these figures, which seem to establish both an expectable and a permanent demographic truth about the United States (and probably about any large country), the question of the enforcement of near-exact arithmetical equality in Congressional Districts has to take on a new dimension. These figures, it is submitted, in themselves absolutely explode the idea that there is any reliable connection between exact equality in district populations and exact equality in numbers of persons eligible to vote. The enforced equalization of districts down to the last decimal cannot, *as a matter of stubborn fact*, be carried out in the name of protection of the equalization of voting power.

(The only possible way to evade the clear impact of these figures is to abandon entirely the bedrock assumption of the apportionment cases—the assumption that dilution of the *vote* is the thing protected against —and to contend that not only voters but also all inhabitants are "represented" by the Congressman. In some sense, this is unquestionably true. But if its truth is to support a requirement of exact equality in populations, without regard to variations in numbers of persons age-eligible to vote, that must be because it is judged, against all seeming, that the "representative" relation to the voter, and the "representative" relation to the non-voter, two entirely different relations, are *exactly* the same in value, a sameness expressible by exact arithmetical equalization, one to one. Actually, they are not even commensurable quantities, but are generically different.

The opinion in *Wesberry* v. *Sanders*, 376 U.S. 1 (1964), is, moreover, simply saturated with the assumption that *voting* equality is the value sought. See, for only an example, the first two paragraphs in Part II, dealing with ". . . the merits," 376 U.S. 7-8. It is as "qualified voters" and as qualified voters alone, that plaintiffs in this case have sued; it is only as qualified voters that they have alleged or proven anything which could so much as arguably give them standing to sue. A shift from the vote-dilution rationale to any other rationale would not be a minor alteration but a diastrophic change, a repudiation of the whole theory of the apportionment cases from *Baker* v. *Carr* forward.)

(iii) A further and most telling point is that district populations grow at different rates, only in part predictable, and sometimes quite surprising. If what one really is interested in is equalization *either* of voting population *or* of total population, this means that

equalization on the basis of census day (*e.g.*, April 1, 1970) only very roughly correlates with the power of the vote through the ensuing decennium, when people are actually voting. This effect is materially accentuated by the fact that the first Congress that can possibly be apportioned on the new census figures assembles in the *third* January after the April 1 census day, which means that between one quarter and three-tenths of the census decade is already gone before the figures have effect on the roll-call in the House—or, to look at the matter from aonther side, that the old figures must rule apportionment until 12 years and nine months after they are collected. The *second* Congress of President Nixon's Administration was still based, and had to be based, on statistics collected when Mr. Nixon was Vice-President under President Eisenhower.

It will be well to take a single concrete example of this, and then to give enough shorter examples to show the national prevalency of the phenomenon.

The area contained in the present 10th Texas, with 465,493 people, showed a growth rate of 24.5% in the decennium 1960-1970. The 9th Texas, with 467,483, showed a rate of 11.5% in the same period. If these growth rates have continued, then in the over 2½ years between census day 1970 and the *first* of five elections to be held under the new apportionment, the district populations were already over 13,000 people, or some 2.6% apart. Sometime well before the next election (but nine years and four elections before a new census takes effect) if the 1960-1970 growth rates continue, these two districts (so trivially variant in the 1970 figures) *will be further apart than any two districts in S.B. 1*, the legislative plan here being defended—and there will still be four more elections to

go, and more than nine years, before a Congress can be assembled (in January 1983) reflecting the "new" 1980 census figures—themselves by that time close on to three years old! Not even one election can be held under any given census, before that census is 2½ years out of date—with all that implies in the presence of those widely variant growth patterns that have always characterized and will certainly continue to characterize the different sections of any fairly large state.

These two districts have been selected not because the difference in their growth-rates is extreme—indeed, it is quite moderate compared with others encountered in Texas and elsewhere—but because another point can be made from them.

Most of the population of the 10th Texas is in the Austin Standard Metropolitan Statistical Area; most of the population of the 9th District is in the Beaumont-Port Arthur SMSA. Each of these SMSA's contains about 300,000 people.

Undoubtedly, a principal factor in the 1960-1970 growth-rate differential between these districts was the differential in growth rates between these SMSA's; the Austin rate was 39.3%, (TEXAS ALMANAC, 1972-1973, 150) while the Beaumont rate was 3.3%. (Bureau of the Census, STATISTICAL ABSTRACT OF THE UNITED STATES, 1971, 19.)

This differential is brought forward as an instance of the *unpredictability* of growth rates. For in 1950-1960 the Beaumont rate was 29.9%, while the Austin rate was 31.8%. (Bureau of the Census, STATISTICAL ABSTRACT OF THE UNITED STATES, 1961, 14-15.) In 1960, quite obviously, no demographer could have foreseen the dramatic shift that later occurred. Trade patterns, world-wide fluctuations in the oil industry,

growth in state-governmental activity—these or similar things, only cloudily if at all foreseeable in 1960, must have produced this result. But suppose that in 1960 there had been a demographer clairvoyant enough to predict this change. Is it conceivable that a legislature would believe him? Should a court order a legislature to believe him? Is it politically possible that the residents of Beaumont would have accepted as fair a drastic scaling down of representation, on the basis of a prediction that their growth-rate would in the next decade be one-eighth or thereabout of the rate in the just-passed decade?

As has just been said, this case is not extreme. The extreme range, in Texas, is a 101.1% growth rate for the 7th Congressional District, and a —7.8% growth rate for the 13th, in 1960-1970. Crude mental arithmetic easily suffices to show that, if these rates have continued, the 7th, having gained over 25% in the two and a half years since the census is already heavily "overpopulated" and "underrepresented," though "underpopulated" by 1.03% in S.B. 1., as of the 1970 census. It is an even more startling dramatization of the present point that (if 1960-1970 growth patterns have continued, both state-wide and in the 13th) the 13th Texas, the most *overpopulated* and numerically most "deviant" district in S.B. 1, is *right now*, even as we reason of these matters, some 18,000 people *underpopulated*, as against the *present* statewide "ideal!" There is something wrong, somewhere, with the invalidating of S.B. 1 in the name of either population equality or voting equality, in the light of these facts.

Of course, as the Beaumont example shows, there is no warrant that the growth patterns of 1960-1970 have continued, or will continue. If we had such certitude, then the exact equalization of populations, from

election to election, would theoretically be possible, though maddeningly cumbersome, maximally disruptive, and probably unconstitutional (since analogy with the federal plan, based as it is on the decennial census, would wholly break down). The lesson of these figures is rather that largely differing rates of growth are inevitable, but that they are not predictable in detail or sometimes even in gross.

The impossibility of accurate forecast of population changes, especially on the sub-national level, seems to be accepted by all authorities.

> "With the great fluidity of population movement within the United States and Canada, an understanding of the economic, social, and political forces motivating these movements is particularly important in making postcensal projections for geographic areas and communities. These forces may be subject to wider fluctuation in the small locality dependent upon a few specialized industries than in the heavily populated area with a stabilized and diversified economy. Accordingly, it might be expected that the problem of population projection would be less difficult in the latter situation. *However, no satisfactory technique for making subnational population projections has been developed thus far,* although a great number of methods have been used."—Spiegelman, INTRODUCTION TO DEMOGRAPHY 415 (1968). [Emphasis supplied.]

There is, so far as appellant's researches have reached, no professional disagreement as to the unreliability of post-censal projections, or as to the "much greater average error" in "projections for states, provinces, localities, etc.," as opposed to nations. Bureau of the Census, THE MATERIALS AND METHODS OF DEMOGRAPHY 806 (1971). In one extensive study of attempted forecasts, the average 5-year error was 6%,

but the extremes for the same period were 25% too low to 30% too high. Siegel, *Some Aspects of the Methodology of Population Forecasts for Geographic Subdivisions of Countries*, United Nations, *World Population Conference*, 1954 (Rome), Vol. III, at p. 122 (1955).

The enforcement of very nice equalization, on the basis of figures which will always be obsolete, to an unpredictable degree, by one-quarter of the relevant decade, on the day of the first election under the new plan, cannot realistically be mandated in the name either of population or of voting equality. If not, then in the name of what?

It seems almost otiose to add that large sectional differentials in population growth are not to be found only in Texas; they exist in virtually every State. In Missouri, for example, there are ten districts, very nicely equalized on 1970 census count, with variation up and down of considerably less than 1%, which seems to be the working definition of "zero" in some lower courts. Specifically, the 1st and the 2d Districts are unequal by a derisory 752 souls. But the growth rate of the 2d was 32.5% in the decennium 1960-1970, and that of the 1st was —13.1%. If these growth rates have continued, then simple arithmetic shows that those two districts, at the time of the 1972 election, the very first election possible under the new Census, will have differed by some 50,000 people. The 9th Missouri and the 10th Missouri were 27% apart in growth rate in 1960-1970; if this has maintained itself for 2½ years, then they are now, even as we admire the nice equalizing work of the Missouri District court, well over 30,000 people apart, much more than the two most widely separated Districts under Texas' S.B.1. Even in Montana, with its two almost exactly equal

districts as of April 1, 1970, there will be a 5.5% variation by 1975, and some 13% variation by the time (December, 1982) when the last Congress chosen under this plan is dissolved, if past growth patterns hold. (All data herein are from the state-by-state pamphlets of the Bureau of the Census, entitled CONGRESSIONAL DISTRICT DATA, DISTRICTS OF THE 93d CONGRESS.)

(iv) Another set of factors, having random but sometimes significant impact, is found in the presence within any district, but in numbers that vary from district to district, of persons who, though of voting age, are are not eligible to vote, or are eligible to vote only in some other district whereto their permanent residency is assigned by law.

Aliens may be of high importance in some districts, if one is aiming at equalization to a fine approximation. Texas, for example, had about a quarter of a million resident aliens in 1970; some 200,000 of these were Mexican (TEXAS ALMANAC 1972-1973, 146). These Mexican aliens thus constitute about 1.8% of the State's total population. If they were evenly distributed they would make no difference in apportionment. On the absolutely certain assumption that their distribution pattern follows that of Mexican-Americans (see *supra*, p. 28), they are by no means evenly distributed, but are very heavily concentrated in the El Paso area, the Rio Grande Valley, and roughly northward to San Antonio. This pattern could change, of course, but there is no reason to think that the distribution of these people is or in any foreseeable future will be anywhere near even statewide. The proportion of persons eligible to vote is therefore made significantly non-uniform, as among districts, by this factor alone. (It must be recalled that the distribution of

persons of Spanish surname shows a regional difference of something like 100 to 1, see *supra*, p. 29.)

Texas is filled with military installations. Military personnel actually resident in the State may of course vote in Texas, *Carrington* v. *Rash*, 380 U.S. 89 (1965), but not all need be resident, and many will not be. (This fact has been recognized explicitly here: "While many servicemen in Texas were not bona fide residents, and therefore properly ineligible to vote, many servicemen clearly were bona fide residents." *Dunn* v. *Blumstein* 405 U.S. 331, (1972).) These military activities are of entirely unpredictable magnitude, over any decennium; they are in fact guarded by counter-intelligence against predictability. Of course the installations are not equally distributed throughout the State. What is therefore sure is that they will generate considerable distortion of population-to-voter ratio throughout the state, and that this factor will vary unforeseeably through time.

Texas has a number of institutions of higher learning. Some of the students may and will vote at their permanent homes, others at the college city; there is no guarantee whatever that they will choose among these alternatives in the same proportions year after year. Again there is considerable possibility of distortion of the ratio of qualified voters to population, within any district.

Texas here stands only as an example. Obviously, most if not all States exhibit patterns of variance of this kind.

(v) It remains to enter two caveats on the foregoing arithmetical materials (i-iv, *supra*).

The first caveat is that these figures are not intended, and will not serve, as guides for further refine-

ment of the exact-equalization process, but are rather indicative of the futility of the quest after exact equalization. Neither legislatures nor courts could be expected to handle the superimposition of all the Ptolemaic epicycles which would have to be geared into census population in order to bring about anything near true voting-population equality on each election day. The above figures only begin to suggest the complexity; a complete model would have to allow for growth and decline not only of gross population but of alien, military, prisoner and student population, for change of preference among students as to voting place, for the coming of age of persons as young as eight on census day, as played off against the likelihood of their moving, for the percentage of age-eligibles in populations probably undercounted, as opposed to their proportions in more correctly counted populations, and so on, *ad infinitum* or nearly. One would even have to consider the exceedingly difficult question whether the *uncast* vote is entitled to just exactly the same protection, down to the second decimal place, as the *cast* vote, or whether, on the other hand, the cast vote may be "diluted" or "debased" in some other sense and in some other degree than can the uncast vote; there is surely some paradox in the concept of the "dilution of the vote" of a person who dilutes his own vote 100% by not voting. Beyond doubt, such an exercise would begin to caricature itself before it was completed. It would have to be done over with a complete new census before every election, and even then would not be accurate by the time election day came.

The figures just rehearsed rather show that exact equality is a mirage, either wholly unattainable or attainable only at a cost in contrivance which no political society will pay.

The second caveat is that no cure is to be found in the courts' merely giving legislatures the option either to take such factors as age or population growth fragmentarily into account, or to enact plans based solely on census figures. See *Burns* v. *Richardson*, 384 U.S. 73 (1966). There can be no principled or logical derivation of a rule which would allow either a blind lunge toward voter equality, such as census-count equality has here been shown to be, or some more (though still most imperfectly) refined attempt at true voter equality. What these numbers actually establish is that the phenomena upon which exact equality is sought to be imposed vary too much and too unpredictably, in a number of relevant synchronic and diachronic ways, for the predication of arithmetically exact equality to be meaningful at all. These figures ineluctably pose the question whether it can be a characteristic of good law to command the performance of a futility.

> *(b) It is the consensus among virtually all serious thinkers on the subject that "fair and effective representation" is related only loosely, indirectly, and in ways not expressible by numbers, to exact population equality among constituencies. This makes insistence upon exact arithmetical equality, at the least, futile and, at the most, counterproductive, if the goal is "fair and effective representation".*

The elementary demographic materials just presented are abundantly sufficient in themselves to establish the entire lack of reliable connection between voting power, however conceived, and exact population equality as of some long-past census day. It might be less confusing simply to omit reference to vaguer and more philosophic notions. Nevertheless, the present

main point cannot be dealt with in the round without some mention of the fact that even perfect voting-population equality on election day (something which must be dealt with in counterfactual conditional form, since it cannot be attained unless by rare chance) would not bring about equality in "fair and effective representation", the only goal ultimately worth seeking (*Reynolds* v. *Sims*, 377 U.S. 533, 565-6 (1964)); indeed, "equality", a literal arithmetical term when applied to populations, is a metaphorical term, inviting judgment rather than counting or measurement, when applied to "fair and effective representation".

It is in no way in appellant's interest in this case to persuade this Court of the correctness of any theory of "representation", among the many, complete or partial, fully-baked or otherwise, that have been brought forward both before and since *Baker* v. *Carr*. (For a sampling of this enormous literature, and leads into the rest of it, see Dixon, DEMOCRATIC REPRESENTATION 3-57 (1968); Pennock and Chapman (eds.) REPRESENTATION (1968).) Nor would the appellant presume to forecast how far the Court may ultimately wish to go in choosing among these, and in implementing its choice, though it is very hard to see how such choice could be made according to law. All that need now be said is that, as far as appellant is aware, no partial or complete theory of fair and effective representation maintains or implies that there is a straight-line relation between exactness of population or voter equality and nearness to the goal of fair representation, though few if any such theories do not see *approximate* equality as a *sine qua non* of representative fairness. If correct, this would mean that the insistence on exact arithmetical equality is not an insistence on fair representation as such.

At the worst, insistence on exact arithmetical equality may be counterproductive with reference to the goal of fair and effective representation, for it bounds all experiments in constituency formation with a stringency of numerical requirement that is not related to the fair-representation goal.

Appellant repeats, however that the arithmetical data, developed in point A(2)(a) *supra*, conclusively show the lack of any reliable connection between voting power and exact census-count equality; the more philosophical material herein referred to simply places this demonstration in a field of reference that makes the point visible from another side, though no more certain.

3.

Subpoints 1 and 2 are interconnected. The nature of the Wesberry *rationale (Subpoint 1) is such that it could never lead to the performance of a futile act, as Subpoint 2 shows insistence on exact arithmetical equality to be.*

The sentence in the plaintiff-appellees' complaint, with which subpoint A, 2 began (*supra* p. 25) is without referent in the real world; it is true only by postulational fiat, by imagination of a state of things which in part never was and in part had ceased to be before the complaint was drawn and filed. Federal constitutional law should not and, properly interpreted, does not, reach deep into State structure for no other goal than that of protecting a fictitious equality, an equality corresponding to no discernible phenomenon in the world of real voters and voting, or in the wider world of political power and influence of which voting is a part.

It is the submission here that the two subpoints above, I, A, 1 and 2, are not independent, but profoundly related.

First, as brought out in A, 1, *supra*, *Wesberry* v. *Sanders* rests in part on *implication* from the federal scheme. In A, 1, it was shown that nothing in the history or nature of the federal representational scheme could serve to make that scheme the first term in an analogy which would lead to a requirement of strict district equality. The contention in A, 2, has been that the nature of the data on which such a requirement must operate, and of the wider frame of politics within which it operates, makes it impossible for the requirement to serve any practical function, or to advance any value.

The connection between these points is found in the fact that the first of them exhibits that *Wesberry* v. *Sanders* rests on an analogic or structural argument, an argument from the nature and intendment of the federal plan, rather than from anything said with unavoidable clarity, or indeed with any clarity at all, in the Constitutional text. If a given norm is stated with literal clarity in the Constitution, then it must be obeyed; it does not make any difference whether it is sensible or practical to allow the President only ten days, Sundays excepted, to return a bill (Article I, § 7). But the constitutional norms regarding congressional districts are not like that. The rationale of *Wesberry* v. *Sanders* is, fundamentally, that the nature of the federal plan is such that gross inequality in districts is functionally inconsonant with it, and makes practical nonsense in its presence.

Appellant submits that it is the first requirement of a rationale of this implicational or analogic form that it must lead to a sensible, practical result. The argument says, in effect, that equalization of congressional districts within each State is requisite because inequality in such districts practically disserves the values

sought by the national plan. But if the insistence on very close arithmetical accuracy serves no value, no practical end—and that, as appellant has just shown in Point I, A, 2, is very clearly the case—then the argument fails, quite as much for that reason as for the reasons, developed in subpoint 1 above, that the original intent surrounding the inception of the federal plan cannot be shown to support a requirement of exact arithmetical equality, and that the nature of the federal plan makes that plan unavailable as the departure-point for an analogical argument leading to a requirement of tight district equality.

The second connection between the two points, 1 and 2, *supra*, is to be found in the fact that *Wesberry* seems to rest in part on the imputed intent of the Framers—on a judgment as to what they would have said of district inequalities. ". . . [E]qual representation for equal numbers of people . . ." is said to be ". . . the high standard of justice and *common sense* which the Founers set for us." 376 U.S. at 18 [Emphasis added].

The italicized words are crucial to the present point. If as herein shown, the exact arithmetical equality requirement serves no practical end, then few things can be plainer than that the common sense of the Founders would have led them unhesitatingly to reject it. The appeal here is not to a common sense general among mankind, but to the unique and uniquely well demonstrated political common sense of the Framers—a common sense that breathes in most of what they said and in everything they did. What would be the answer, if one could ask James Madison, "Shall we involve the federal judiciary in enforcing against the state legislatures a rule of exact arithmetical equality in district populations, a rule which can be shown to serve no practical end, since the 'equality' it commands is quite

fictitious?" To frame Madison's answer *verbatim* would be to adventure into eighteenth-century rhetoric, but who can doubt what the general bearing of the reply would have been?

To summarize at this point, the exact-equality requirement of *Kirkpatrick* is in error, (1) because neither the intent in 1787 nor the nature of the federal plan supports the requirement; (2) because the nature of the figures on which the requirement can operate, and the nature of the political universe, make the requirement a futility, a thing good law can never command; and (3) because these two points, as just shown, are connected and reinforce one another. Unless shielded by some considerations extrinsic to the merits, *Kirkpatrick* should be modified.

B. There are discernable no factors extrinsic to the merits that can protect Kirkpatrick from modification. On the contrary, great harm seems to flow from the requirement of arithmetical exactness.

If, for the foregoing reasons, *Kirkpatrick* was in substantive error, in deriving from Article 1 § 2, of the Constitution a rule of strict arithmetical equality, then, since not all erroneous precedents are suitable for overruling or substantial modification, it remains to state why *Kirkpatrick* exhibits none of the factors which can and do protect the dubious (and sometimes even the discernibly erroneous) precedent from change. These factors have recently been canvassed here, see *Moragne* v. *States Marine Lines, Inc.*, 398 U.S. 375, 403 (1970):

> "Very weighty considerations underlie the principle that courts should not lightly overrule past decisions. Among these are the desirability that the law furnish a clear guide for the conduct of

> individuals, to enable them to plan their affairs with assurance against untoward surprise; the importance of furthering fair and expeditious adjudication by eliminating the need to relitigate every relevant proposition in every case; and the necessity of maintaining public faith in the judiciary as a source of impersonal and reasoned judgments. The reason for rejecting any established rule must always be weighed against these factors."

"The first factor, often considered the mainstay of *stare decisis*, is singularly absent in this case." *Moragne*, *supra*, 398 U.S. at 403. These words are as applicable here as in *Moragne*. In the nature of the case, no vested interests can possibly have arisen in reliance on *Kirkpatrick;* no commitments can have been made in the expectation that the *Kirkpatrick* rule would stand unmodified. The rule of the case can operate only to invalidate and undo the work of a districting legislature, after that work is done—or to discourage a Legislature from undertaking the work at all, see *infra.*, p. 59. No meaning can be given to the concept of action in reliance on a rule having only those applications.

Secondly, *Kirkpatrick* (as to its requirement of arithmetical exactness) now stands as a solitary precedent, substantially without ancestry or progeny in this Court. A modification of the rule of the case would neither disturb a long-settled course of decision here, nor impeach the efficacy of that repeated consideration which is evidenced by such a course of decision. The cases cited in *Kirkpatrick*—*Swann* v. *Adams*, 385 U.S. 533 (1964), and *Davis* v. *Mann*, 377 U.S. 678 (1964) —concerned deviations many times greater than that shown in *Kirkpatrick*, and hence did not speak and could not have spoken to the issues of tight arithmeti-

cal equality. The same is true of *Wesberry* v. *Sanders*, *supra*. The *Kirkpatrick* rule has not been applied again in this Court; the cases wherein *Kirkpatrick* has been cited have, it seems, involved variations large enough not to raise the issue of tight arithmetical equality. See *Whitcomb* v. *Chavis*, 403 U.S. 124 (1971); *Ely* v. *Klahr*, 403 U.S. 108 (1971); *Connor* v. *Williams*, 92 S. Ct. 656 (1972).

The other side of this coin is that it can be no matter for wonder, in this very new field of districting and apportionment, that some truing-up may need to be made of freshly enunciated rules. Such adjustment has occurred in every field of law as it has developed; with *The Thomas Jefferson*, 10 Wheat. (23 U.S.) 428 (1825), *e.g.*, compare *Jackson* v. *The Steamboat Magnolia*, 20 How. (61 U.S.) 296 (1857), and the history therein recited. The difference in this field is only that the development has been compressed within a short span of time. Confidence in the judiciary, see *Moragne*, *supra*, at 405, can only be increased by a timely show of willingness to go through this necessary work of adjustment.

The third *Moragne* criterion, the interest in "fair and expeditious litigation," 398 U.S. at 404-5, necessarily suggests a weighing of "expedition" against the harms arising from the erroneous precedent. The *Kirkpatrick* rule (like the pre-*Moragne* rule) is not evidently innocuous, but is in all probability productive of great harm. Some of these untoward consequences are well illustrated in this case; others are illustrated in other recent cases in the lower courts.

The dominant one among many harms is the one that appears on the face of the matter, in every case where the *Kirkpatrick* rule is applied. If the *Kirkpat-*

rick requirement of utmost possible arithmetical equality is wrong, then its application is in all cases an unjustified trespass by the federal judicial power upon some of the most important decisions of the State Legislatures. The line overstepped, if overstepping there be, is the principal boundary-line of our federalism, now, as in the time of Herbert Wechsler's classic essay, chiefly guarded by political structure; see Wechsler, *The Political Safeguards of Federalism*, in his PRINCIPLES, POLITICS AND FUNDAMENTAL LAW (1961). Of course State Legislatures are limited by the national Constitution, but it is equally true that national intervention in their work is limited by the Constitution, and by respect for the values of federalism, and that no unjustified encroachment on this work can be regarded as harmless error. If, as argued in Point A, 1, *supra*, the exact arithmetical equality rule of *Kirkpatrick* is in error, then the enforcement of that rule against the State legislatures is "an unconstitutional assumption of powers by courts of the United States which no lapse of time or respectable array of opinion should make us hesitate to correct." (Mr. Justice Holmes, as quoted by Mr. Justice Brandeis in *Erie Railroad Co.* v. *Tompkins*, 304 U.S. 64, 79 (1938).) This is really enough to establish that the rule in *Kirkpatrick* is not innocuous. But there is more.

An inevitable or nearly inevitable concomitant to this substantive intervention is what has become (appellant makes bold to say) the shockingly common redistricting of states by courts. The present case, again, illustrates this evil; as to the quantum and scope of judicial consideration brought to this matter in this case, see Point III, *infra*. Other cases from the lower courts, however, illustrate the prime thing that is wrong with this species of judicial activity, no matter

how carefully the decree may be considered—the absolutely irreduceable fact, which can be faced or ignored, but not exorcised, that every districting plan, by whomever promulgated, necessarily has deep political effects, and therefore cannot be constructed without the conscious or unconscious making of many purely political decisions.

The assertion that districting always calls for a very large number of purely political decisions is not an empty generality, but could be copiously—almost endlessly—illustrated from the record in this very case, or in any well-tried case on districting. The range may be shown by examples at widely different levels of generality.

First, as a simple example, let us consider the treatment of Hill and Ellis Counties, in S.B. 1 and in Plan C respectively. In the Texas Legislature's plan, Senate Bill One, District 6 comprises Johnson, Ellis, Hill, Navarro, Limestone, Robertson and Brazos Counties, and parts of Dallas and Tarrant Counties. These counties, other than Dallas and Tarrant, contain some 236,000 people, as of the 1970 census, and are predominantly agricultural. Thus, in the Legislature's District 6, there is something near a balance between these agricultural regions and urbanized parts of Tarrant and Dallas Counties. Under these circumstances, it may be assumed that agricultural interests will have great weight in the choice of a Congressman, with all that implies as to having his ear.

Now in Plan C, adopted by the court below, Hill and Ellis are detached from the other rural counties in this district, and are grouped (in a district numbered "24") with a large portion of Dallas County. Hill and Ellis aggregate some 67,000 people; these two pre-

dominantly agricultural counties are then entirely outnumbered, for of the nearly 400,000 people in Dallas County with whom Hill and Ellis are grouped, the great majority are in the City of Dallas or its suburbs.

Now appellant is not for one moment asserting or implying that one of these treatments of Hill and Ellis Counties is better than another. Three things are, however, confidently asserted: First, the two widely varying treatments of these two counties is significant, is not presumptively trivial, unless all issues about representation are trivial. Secondly, districting for Congress involves a great multitude of such choices, related to one another in exceedingly complex ways, so that any court that districts a state must make a very large number of choices like this one, whether consciously or unconsciously. Thirdly, this is not a good thing for courts to be doing, because there is nothing in law, nothing reachable by the methods of law, that can possibly answer such a question as whether Hill and Ellis Counties should be grouped with other agricultural counties to make up about half the population of a district, or grouped with an overwhelming urban majority, so that other agricultural counties may be put into other configurations, where *their* agricultural interests will decidedly predominate.

(It may be said parenthetically that the decision on this point is obviously far more significant to the inhabitants of Hill and Ellis counties than a small population variance from "ideal" could possibly be. It ought also to be noted that the decision not to make such choices consciously, but to refer them in some way to random chance, is itself a highly political decision.)

To take another example, this time at a very different level, a strategic level, so to speak, someone

must decide whether or not the overall plan of districting is to reflect a concern for maintenance of present constituency-incumbent relations—or, to put the matter another way, whether congressional districts are to be continued as entities from decade to decade, with necessary peripheral adjustments to effect required population equality. The reference here is to the so-called "core-concept."

The decision to follow the core-concept is a political decision. The decision not to follow it is a political decision. Whoever districts must make this decision. If a court draws district lines, then a court must make it, and it makes the political decision just as much by not following the core-concept as by following the core-concept. But there is, it is submitted, nothing in law or derivable from law that can assist a court in making this purely political choice. (For the connection of the core-concept with this case, see *infra* (p. 72.)

Thirdly, and on the most general level of all, districting by courts can be done according to law only if the law somehow receives into itself some clear, coherent and complete theory of "fair and effective representation," as this works out into constituency-building (*supra* pp. 42-44). The reception and espousal by this Court of such a theory (out of the welter of theories competing in the literature) has not taken place. Appellant ventures to suggest that it will not take place, because the selection of a complete set of canons on fair representation cannot be validated by any sanctioned or legitimate method, however latitudinarian, of constitutional exegesis. A distinction is to be taken here between a rule of *partial* coverage, sufficient to *invalidate* a plan, and a set of rules or principles sufficient in coverage to *form* a plan. For example, there must be some point (one would hope it would be

reached quite early) at which a racially discriminatory motive or impact *invalidates* a plan; see *Whitcomb* v. *Chavis*, 403 U.S. 124 (1971). But a rule against racial discrimination cannot suffice affirmatively to *form* a plan, or to ground the choice among the virtually numberless plans none of which will be racially offensive.

The consequence would seem to be that courts of law ought to seize upon every legitimate means of avoiding affirmative districting. Appellant cannot absolutely guarantee that the allowance of reasonable numerical latitude to the States' districting bodies will significantly further this disengagement. But (if it be agreed that the arithmetical-exactitude rule is without substantive warrant, see Point A above) then there can be no harm in testing out the common-sense prediction that the easing of this rule will bring it about that more legislative plans will pass muster, and that the courts will correspondingly be less involved. Professor Dixon, a leading authority on redistricting and reapportionment, has said:

> "When given clear mathematical guidelines, few legislatures have failed to accomplish reapportionment. For example, in September of 1965 after months of futile legislative effort, the California Supreme Court gave a new deadline and two main guidelines: no district could deviate by more than 15 percent from the average district; the electoral percentage in each house had to be 48 percent or higher. In a month reapportionment was accomplished, and there was no appeal." Dixon, DEMOCRATIC REPRESENTATION 18-19 (1968)

This last point should be made clear beyond possibility of misunderstanding. Appellant is not saying that the strict rule of *Kirkpatrick* should be eased because that easing will in high probability disengage the courts from much districting work. Appellant has

tried, on the contrary, to show that the *Kirkpatrick* rule is wrong as a matter of law, see Point I, A *supra*, without reference to judicial convenience or even to the propriety of judicial engagement in districting. The present line of argument goes only to the question, "Is the *Kirkpatrick* rule, though substantively wrong, so evidently harmless that adherence to the *Kirkpatrick* precedent is innocuous?" Appellant's answer to this question is in the negative; the erroneous *Kirkpatrick* rule not only interferes unwarrantably with State political structure, but also is in all probability a principal cause for the current heavy involvement of the courts in the work of districting, to which their legitimate intellectual tools are inapt and inadaptable; easing of the erroneous *Kirkpatrick* rule would in all probability not be a step without practical benefit, but on the contrary one which would relieve the courts of much of this unsustainable burden.

In other respects than their tendency to lead to judicial districting, ordinary actions at law can be seen to be exceedingly poor vehicles for dealings with political structure. Some of these reasons are illustrated by this Record, some by other cases recently handled in the lower courts.

The initiation of a districting suit is a matter of chance and of private choice. We have ten plaintiffs in this case, out of some 11 million people, and some 2 or 2½ million voters, in Texas. What would have been the situation if no one of these ten people had chosen to sue? This choice, realistically, will often be made on the basis of available resources, or of counsel who will donate their services; see the Motion to Dispense with Printing filed by appellees herein.

Massachusetts may be taken as an example of the

fortuitous impact of private decision. That State, with an "ideal" district of 474,093, has districts which vary from 469,438 to 477,054, a variation of 7,616, or about 1.6% up and down. If the *Kirkpatrick* rule means what it has been taken to mean, and is right, then so palpable a variation is vulnerable, if the Legislature might have done "better." It is unbelievable that a "better" plan could not be devised, if legislative give-and-take, and all prudential factors, are inadequate justifications for slight variances. At least, if *Kirkpatrick* is right, the question whether the Legislature could have done "better" should be settled in court. But nobody in Massachusetts has sued, and the Massachusetts plan stands.

The existence of meaningfully large variations probably insures a suit, since such variations threaten real harm to the grossly under-represented interests. When such real harm does not threaten, then legislative plans will, under *Kirkpatrick*, stand or fall according to the accidental initiative and persistence of litigants, in cases where no substantial interest of any litigant, or of any class to which he belongs, is actually at stake.

(Inevitably, these considerations lead to doubts as to "standing", see *Frothingham* v. *Mellon* 262 U.S. 447 (1923).) The insubstantiality of the injury to the plaintiffs, in a case such as the present, makes it legitimately questionable whether they are doing any more than asserting a "right" . . . to require that the government be administered according to law . . ." *Fairchild* v. *Hughes*, 258 U.S. 126, 129 (1922), cited in *Baker* v. *Carr*, 369 U.S. 186, 208 (1962). For example, the first-named plaintiff in this case, who was present at the trial, and who seems to have had a chief role in drawing the plan ultimately adopted by the court below (see Amicus Brief of Senator Lloyd M. Bentsen in

connection with the application for stay of the lower court's judgment, pp. 18-19, and appellee's Reply thereto, pp. 4-5), Dan Weiser, lives in the Sixth District under S.B.1; the "overpopulation" in that District is .30%. The fact that the inhabitants of grossly underrepresented districts have standing *(Baker* v. *Carr, supra)* does not imply that everybody has standing. But the question of "standing" is so clearly governed by the same considerations as those that bear on the questions going to substantive merits that the Court, it would seem, need not enter on the consideration of "standing" as a separate matter.)

When one passes from the institution of the suit to the matter of appeal, there is found again a fortuitous impact of choice on the part of litigants. In *Drum* v. *Scott*, 337 F. Supp. 588 (M.D. North Carolina 1972), the lower court approved a legislative Congressional districting plan which is very much like the one in this case; the up-and-down variation is 3.79%, some .3% lower than ours, but the average deviation is 1.01%, as opposed to our .745%. These two plans—the Texas and the North Carolina plans—cannot sensibly be distinguished. Yet, since no appeal was taken in *Drum* v. *Scott*, the North Carolina plan stands. *Cf. Prince* v. *Kramer* (W.D. Washington, Civil No. 9668, April 21, 1972) where a court-devised plan seems to show (on the basis of appellant's own calculations) a 4.77% up-and-down variation, but wherein it seems no appeal has been taken.

There is another and much more difficult appeal problem—that arising in the case where the legislature's plan is obviously or concededly invalid, and where the lower court has selected among proposed plans. An example is *Donnelly* v. *Meskill*, 345 F. Supp. 962 (D. Conn. 1972). Unconstitutionality of the cur-

rent plan was conceded by all; the material problem for the court was the selection or devising of a new plan. Three plans were considered:

(1) A plan submitted by a private plaintiff, cutting no town lines but seemingly somewhat lacking "compactness", a virtue quite insusceptible of exact definition; (2) A plan submitted by the Republican Chairman, cutting five towns; (3) A plan submitted by the Democratic Chairman, cutting five towns. All plans were of virtually zero deviation. Selection among these plans involves, first, the decision whether a gain in "compactness" is worth cutting five towns. Then the court must decide between the "Democratic" plan and the "Republican" plan. It is earnestly submitted that this is an altogether undesirable position for a court to find itself in, since neither of these questions has about it any flavor of law, and the second one absolutely inevitably involves the court in partisan politics.

The Connecticut District Court, as it happens, picked the Democratic plan. The Attorney General of Connecticut has not (so far as appellant can ascertain) filed an appeal. Appeal by a private party (even where technically possible) must depend on private initiative and resources. The subjection of a State's political structure to these factors, like the involvement of courts in such decisions, is a thing that ought to be avoided to the last ditch.

Two more points must be made about the process of appeal in cases such as this. First, where the lower court's selection of a plan is based on totally extra-legal, prudential factors, the framing of an appeal in terms of "error" is exceedingly difficult; where no law governs, a mistake of law is hard to pin down. Second-

ly, it is not acceptable, either as to standards of arithmetical equalization or as to the factors governing the choice of plans, that there be a total want of uniformity of judicial holding throughout the nation. Yet that is the expectable result, if this Court is not to consider every case.

Mention ought to be made here (because the evils under examination are so copiously illustrated by it) of *Skolnick* v. *State Electoral College Board of Illinois*, 336 F. Supp. 839 (N.D. Ill. 1971). The opinion in this case does not summarize easily, for it embodies a large number of choices obviously purely political. There is a withering dissent, in which the necessarily political thrust and impact of the plan the court adopts is shown. But any plan the court had adopted would have had thorough-going political effects. The opinions should be scanned by anyone who doubts that the districting process is leading the lower courts into the consideration of questions plainly not amenable to solution by the methods of law. *Cf.* also *David* v. *Cahill*, 342 F. Supp. 463 (D. N.J. 1972). Here again there was a vigorous dissent, laying absolutely bare the unavoidable political effects of the court's adopted plan.

As a final point, it is quite possible that the abdication by some legislatures of their responsibility, and their total failure to enact plans, arises from a sense of hopelessness engendered by the zero-variation standard of *Kirkpatrick*. See *Donnelly* v. *Meskill*, 345 F. Supp. 962 (D. Conn. 1972); *Prince* v. *Kramer*, (W.D. Wash. Civil No. 9668, April 21, 1972); *Skolnick* v. *State Electoral College Board of Illinois*, 336 F. Supp. 839 (N.D. Ill. 1971); *Legislature* v. *Reinecke*, 6 C. 3d 475, 101 Cal. Rptr. 552, 496 P. 2d 464 (1972); *Dunnell* v. *Austin*, 344 F. Supp. 210 (E.D. Mich. 1972). A legislature told that it may have a given leeway might aim

at a point well within that leeway, and so be reasonably sure that its work was not futile; a legislature told that no variations are permitted might naturally shrink from undertaking this hopeless task. At least, as the cited cases show, that is what some of them are doing. That condition cannot be acceptable to this Court; no one, at the time of *Baker v. Carr*, 369 U.S. 186 (1962), thought that the result of that decision would be that a very large part of the affirmative work of districting would pass into the hands of the courts. The Solicitor General of the United States, *amicus* in *Baker*, said, for example:

> "Mr. Cox: The other possible remedy in *Colegrove* v. *Green* would have been to redraw the Illinois [congressional] districts on the map. Now I don't see how a court could embark on such a task as that, that there are just too many possibilities and that is too much involved in the political process, that it is something that a court really shouldn't undertake to do."—Cortner, THE APPORTIONMENT CASES 113 (1970)

It would be possible to extend very considerably this typology of horrible examples; the lower federal and state courts are, as this Court is aware, very heavily engaged in the districting process. This engagement is undesirable, for all the reasons that have been given, and for many others. It is hard to think we have entered a world wherein its desirability is even arguable. Appellant, as has been said above, cannot predict with certainty that the allowing of reasonable leeway would decrease this engagement, but common sense would suggest the strong possibility that the allowance of such leeway would greatly decrease the number of plans with which this Court and the lower courts will have to deal.

Again, appellant does not put forward this practi-

cal gain as an affirmative reason, in itself, for modifying the *Kirkpatrick* rule. Difficulty and involvement could never be reasons, in themselves, for stepping back from the enforcement of constitutional rights. Appellant's contention in chief is that the rule of strict arithmetical equality is not warranted by substantive law. The point here is only that, far from being obviously innocuous, the rule of *Kirkpatrick* in all probability produces much harm. If (as appellant has contended) *Kirkpatrick* is substantively wrong, then it becomes material that no prudential considerations stand in the way of its modification.

(It ought to be said here, parenthetically, that, even if *Kirkpatrick* be not regarded as suitable for modification as to its general close-equality rule, the case ought still to be modified with respect to its seeming rejection of respect for county integrity as justification for very small variances, for substantially the reasons developed in Point II, B, *infra*.)

C. This Court might warrantably select a stated percentage of variation permissible without inquiry, as a plainly needful remedial device.

The present judgment must be reversed, and Senate Bill One validated, if any modification in the rule of strict arithmetical equality be mandated by law, for the deviations herein shown clearly fall well within any imaginable area of reasonable approximation. Such a holding, however, might still leave the courts below, and this Court, in a position of considerable involvement in State political processes, for judgments of sheer reasonableness must be made case-by-case, and rules would form quite slowly. Legislatures, moreover, would at this time have to proceed without knowing what was expected of them. Appellant will, therefore,

further contend that this Court may warrantably set a fixed percentage figure of permissible variation, so long as independent constitutional norms are not invokable. The choice of such a figure could not properly be called arbitrary; it is never "arbitrary" to do that which is needful. The much panegyrized remedial flexibilities of equity are not so constricted that the selection of a number, where a number is urgently required, is beyond them.

The recent case of *United States* v. *Thirty-seven Photographs*, 402 U.S. 363, 372-375 (1971) is here very closely in point. In that case, this Court faced the problem created by the fact that a penal statute, which could be valid only if it had a short limitation period, set up no limitation period at all. The Court concluded not only that it might read such a period into the statute, but also that *74 days* (60 days to begin the proceeding and 14 days to conclude it) was to be that period. Mr. Justice White's plurality opinion was joined, as to its Part I, wherein the limitation-period choice was made, by five other members of the Court. This case alone would serve to refute the idea that the selection of a definite number, for satisfying a constitutional standard, is beyond the capacity of the judiciary. See also *Dunn* v. *Blumstein*, 405 U.S. 331, 348 (1972). In the very field of apportionment, this Court has designated ten years as the period after which failure to reapportion is constitutionally suspect; *Reynolds* v. *Sims*, 377 U.S. 533, 583-4 (1964).

The judicial selection of a number, for clarity and convenience, did not first enter the world with these recent cases. In maritime law, for example, several instances occur, such as the rule of deducting one-third new for old, in insurer's payments for ship repairs. *Da Costa* v. *Newnham*, (1788) Term Reports 407

(King's Bench); 2 Chorley and Bailhache, THE LAW OF MARINE INSURANCE AND AVERAGE, 1026 (1961). In *Fenwick* v. *Robinson* 3 Car. and P. 323, 324 (King's Bench 1828), it is said forthrightly that this rule is adopted "to avoid discussion in each particular case". In *The Gratitude*, 42 F 299, 301 (S.D.N.Y. 1890) Judge Addison Brown gave these reasons for adopting and imposing the 40-day rule that has since prevailed as to lien priority in New York Harbor:

> "I think the time allowed for retaining priority in these harbor cases may be justly reduced to 40 days. That will give the short credit incident to the usual rendering of monthly bills, and 10 days more for settlement, or libeling the boat in case of nonpayment. It accords in some degree with the period of modern Atlantic voyages; it does not exceed the time ordinarily enjoyed by the ship in the ante-steam period; and it is short enough not to imperil, as a rule, the security, or the partial security, afforded to damage claims, which the maritime law designs also to protect, though subordinately to contract liens on the same voyage, according to the universal practice (except under peculiar circumstances) of at least the last 200 years. The long extension of time heretofore given has led to evils and abuses here, which observation satisfies me ought to be corrected by a nearer approach to the general maritime rule; and the time limit of 40 days, after which such liens will be held to lose their priority as regards any liens arising on a subsequent voyage, or trip, will, I think, subserve all that necessity and that encouragement of commerce for which maritime liens have been created, and for which they are preserved; and that time will not ordinarily or substantially prejudice damage liens, which are of a lower rank, beyond that inferiority which for centuries has been assigned to them as *non-beneficial liens. The time limit is, indeed, an arbitrary limit;* and so is the

season limit, or any other limit that can be adopted for harbor tugs consistently with the existence of such liens at all for any practical use. Any other rule than the voyage rule must be arbitrary, and that rule would leave no practical security whatever. [Emphasis supplied.]

For other lien period rules, similarly adopted, see 2 Benedict, ADMIRALTY 297-9 (6th ed. 1940).

Indeed, the rule against perpetuities, and the common law rules as to majority and age of consent to marry, are creations of judges, fashioned for giving a needful clarity to that which without a definite number remains needlessly and inconveniently vague.

No number can be derived mathematically or logically for the districting problem, any more than one could be so derived for the maritime lien problem. The real reason for picking any given number is that *some* definite number is needed, since benefit will in strong probability flow from its selection. Appellant ventures to point out, however, that the integer nearest equidistant from the average and median variation of the states from the national "ideal" (7.79% and 4.75% respectively) is six (the same figure, as it happens, as the 6% average 5-year error found in one study of subnational population projections, *supra* p. 37) and to suggest that a leeway of 6% up or down could never be unreasonable, or out of harmony with the federal scheme, on analogy to which the equal-district requirement is rested, see *supra*, pp. 20-23, including table on p. 21.

(Professor Dixon has made an unanswerable case for the utility and justice of some such leeway; Dixon, *The Warren Court Crusade for the Holy Grail of "One Man—One Vote,"* 1969 SUPREME COURT REVIEW 219, 234-243 (1969). But appellant contends that equity

needs neither a constitutional amendment nor a statute to do that which is clearly best.)

In any event, no variation whatever should be permitted if it effectuates violation of some wholly extrinsic norm, such as the rule against racial discrimination. The flexibility appellant advocates is based on considerations going to the substantive law of district population equality, and on those alone (see *supra* at p.); these have no application to guarantees of a quite different substantive origin.

Appellant emphasizes again that the disposition of his single case does not require choice of a number; it requires no more than the allowance of *reasonable* leeway, since the variations here must beyond doubt fall well within the "reasonable", however defined. The present subpoint is made simply as a suggestion of a manner in which the Court may modify the unwarrantedly strict *Kirkpatrick* formula without setting the question of "reasonableness" wholly at large.

II

Kirkpatrick *v.* Preisler, *sole reliance of appellees herein and of the court below, may sensibly be distinguished from the present case, and did not therefore compel the judgment appealed from.*

In its short *per curiam* opinion, the court below has treated the present case as one wholly ruled by *Kirkpatrick* v. *Preisler*, 394 U.S. 526 (1969), citing that case, without discussion, as single and sufficient authority for invalidation of the Texas Legislature's plan for Congressional districting. While appellant has contended (in Point I, *supra*) that the *Kirkpatrick* rule, however interpreted, goes distinctly beyond the warrantable substantive law of Congressional districting, and that the *Kirkpatrick* holding ought therefore to be modified, it is the submission here that the present case

can legitimately be distinguished from *Kirkpatrick*, even if the *Kirkpatrick* rule is generally to stand.

Kirkpatrick governs this case, without more, only if the *Kirkpatrick* rule is that any palpable inequalities in congressional districts, even (like those in the present case) substantially smaller than those in *Kirkpatrick*, generate a virtually irrebuttable presumption of bad faith in the legislative districting process, and are unjustifiable on any ground normally emerging from that process. That reading of *Kirkpatrick*, concededly one encountered in much of the commentary, takes insufficiently into account the *Kirkpatrick* opinion's careful canvass of the *specifics* of the Missouri process under judgment in that case, and fails entirely to weigh the historical and functional setting in which *Kirkpatrick* was presented to this Court, as well as certain clearly visible characteristics of *Kirkpatrick* that are found in the lower court's opinion and findings in that case.

Since the specifics of *Kirkpatrick* are clearly arrayed both in this Court's opinion and in the long and careful opinion of the District Court in that case [reported as *Preisler* v. *The Secretary of State of Missouri*, 279 F. Supp. 952 (1967)], many distinctions are apparent. Appellant will, however, select from these the two that are of dominant importance—the difference as to "good faith" (A), and the very specific difference as to "justification" (B).

A. The issue of "good faith" presents itself here in a setting altogether different from that in Kirkpatrick, since there were in that case clear and specific findings of "bad faith" in the most classic sense—intent to bring about overrepresentation of definite interests—while nothing of the sort exists here.

The first inquiry in *Kirkpatrick*, both in this Court and in the court below, was into the "good faith" of the Missouri legislature. Doubtless the most important distinction between this case and *Kirkpatrick* is that in *Kirkpatrick* there was an explicit finding, not successfully assailed, of "bad faith" in the most central and classic sense—the sense, namely, of *intentional effort* to subvert the value underlying the apportiomnent decisions. In the District Court's findings of fact in *Kirkpatrick* (of course under close scrutiny here when the case was at this Bar) the following passage occurs:

> "In Preisler II we found as a fact that 'the discrimination against the St. Louis metropolitan area, evidenced by the 1961 Act, was continued under the 1965 Act' (257 F. Supp. at 958, fn. 4). We find that the 1967 Act continues the same discrimination. We found in *Preisler II* that under both the 1961 Act and the 1965 Act 'the City of Kansas City was split between three separate Congressional districts,' and that under both acts the 'population of the City of Kansas City * * * continued to be utilized to increase the deficient population of two essentially rural districts' (257 F. Supp. at 960). We make the same finding in regard to the use of Kansas City's Platte and Clay County population in regard to District 6 created by the 1967 Act. In *Preisler II* we found that the 1961 Act and the 1965 Act 'both have *the same pattern of overvaluation and overweight of the votes in the rural geographical areas*, as contrasted with the votes in the two metropolitan areas of the State' (257 F. Supp. at 960). *We make the same findings in regard to the 1967 Act*, particularly as it applies to the St. Louis metropolitan area and the area of Kansas City north of the Missouri River." 279 F. Supp. at 975. [Emphasis supplied.]

And again:

> "The shortest answer in regard to defendants'

contention about alleged population growth in Districts 4 and 6 is that it is *ex post facto* argument designed as an attempt to justify successive Missouri Legislatures' *adamant and continued effort to malapportion in favor of rural geographical areas.* 279 F. Supp. at 983. [Emphasis supplied.]

These findings put *Kirkpatrick* in a definite historical setting, and surround all the sub-issues regarding the Missouri Legislature's "good faith" with a context of long-continued, intentional and still-continuing wrongdoing with respect to the very value sought to be preserved by the apportionment decisions. The Missouri Legislature, it was found, was trying (and long had been trying) as hard as it could to favor certain interests over others, and this in the very direction toward which malapportionment and maldistricting had overwhelmingly tended before *Baker* v. *Carr*, 369 U.S. 186 (1962), in Missouri and elsewhere. This may well have justified casting upon Missouri a heavy burden of proof with regard to all the issues, whether of "good faith" or of "justification".

This character and flavor of *Kirkpatrick* was not missed by all of the commentary. For example, a Note on the case said:

> "The Court's ruling in *Preisler* is dictated not so much from concern over mathematical variation, as it is from concern over Missouri's conspicuous bad faith in its reapportionment effort. Missouri came to the Court with inaccurate data, avoidable variances, simple solutions, and feigned justifications. Under these circumstances the Court's rejection of its districting plan was inevitable."—Note, 15 VILLANOVA L. REV. 223, 229 (1969).

Nothing of this sort has been shown or can be shown in this case. It happens, somewhat paradoxically, that the three most overpopulated (and hence, putatively

"underrepresented") Texas districts (13, 16 and 19) are in predominantly rural West Texas. But the most underpopulated (and hence "overrepresented") District (15) is in predominantly rural South Texas. The great cities, on the whole, are trivially "overrepresented", though central San Antonio (District 20), is as it happens, trivially "underrepresented". Neither on the face of the map nor anywhere else in our Record is there any evidence, or even a charge, of desire or intent to favor or disfavor any sectional or other identifiable interest, or of any patterned action tending in that direction. This Record, fairly read, affirmatively clears the Legislature of bad faith in any common sense, unless the rule clearly is to be that a legislature is presumed guilty of bad faith until the contrary is overwhelmingly shown. As the presiding judge summed the matter up at the trial below, "I agree it was probably the best you could do." (A. 322.)

It is striking that the two principal architects and managers of Senate Bill One—State Senator J. P. Word and Representative Delwyn Jones—come from Congressional districts "overpopulated" and therefore putatively "underrepresented" in that Bill. TEXAS ALMANAC 1972-3, 628-9.

It can hardly be that this entire absence of any suggestion of intent to favor or to disfavor any sort of interest can make no difference on the issue of "good faith". "Good faith" might well be found to inhere in the honestly intentioned though not totally efficient effort, eventuating in small random discrepancies (this case, at worst), while not inhering in the deliberate and persistent effort to sail as close as possible into the wind, while still perpetuating as much as possible of the old evil (the *Kirkpatrick* case; see above). Indeed, this distinction brings the usage of the term "good

faith" in apportionment decision back into line with the usage of the same term elsewhere in law. "Good faith" does not anywhere else mean total success; where there is total success "good faith" need not be inquired into.

The giving effect to this distinction—the distinction between the case, such as *Kirkpatrick*, where a definite animus in favor of one sort of section or interest is established, and a case like ours, where there is no showing of such an animus—would be profoundly historical, and sensible within the historical frame, for it would make "good faith" turn, in part at least, on the established presence or absence of a purpose to perpetuate the old historic wrong of malapportionment. It would, moreover, make it possible, in the case, like ours, where no such purpose is shown, to judge legislative efforts as they must be judged if districting is to be left with legislatures. "Good faith", in this context, must generally denote such "good faith" as can meaningfully be predicated not of a single mathematician, working with census blocks and a computer, and with nothing but numbers on his mind, but of three separate political authorities (in Texas, a House of 150 Members, a Senate of 31 Members, and the Governor) working in most intricate coaction, against time, toward compromise amongst many legitimate claims. Into such a process there will inevitably enter some inefficiency and even some weariness. To ask more good faith than that of which a Legislature is organically capable is to reject redistricting by Legislatures, except where lucky accident produces arithmetical equality. It is not credible that *Kirkpatrick*, in condemning the specific Missouri actions before it, infected as they were with proven and found *mala fides*, intended to make this choice generally and for the whole future.

Kirkpatrick need not be so read, if its generalities be taken to be controlled by the clear showing, on a record then freshly before the Court, of "bad faith" in the most classic sense.

B. The sole "justification" needed, on this Record, for these small discrepancies, is minimal respect for county integrity. Kirkpatrick, on its facts, cannot have decided that such respect can under no circumstances justify any deviation, however small, for the Kirkpatrick county-line defense was known by this Court to be sham.

When we turn to the "justification" side of the *Kirkpatrick* doctrine, two liminal difficulties appear.

First, it is not characteristic of the legislative process, here anymore than anywhere else, that it produce *official* justifications. A bill is simply passed; it need not and usually does not come accompanied by a particularized or binding statement of the reasons for its passage. Votes upon it have differing motivations; probably few voting members have the whole structure of any complicated bill in mind; this is not a matter of neglect of duty, but is inevitable in view of the pressures of time. The only pervading substantive motivation is that of the principal managers, but this does not become—even as a matter of fiction—the motivation of the legislature, unless it is publicly stated on the floor or in a generally circulated committee report, which need not be and, in State legislatures, quite often is not done, as it was not done in this case. "Justification", then, may become no more than a matter of the exercise of the ingenuity of those law officers whose duty it becomes to defend the bill.

(It is exceedingly interesting, in this connection, to note that a motion to require the Committee allocating

representatives to the States, in the Constitutional Convention, to state its reasons was lost, 10-1. I Farrand, RECORDS OF THE FEDERAL CONVENTION 565 ff., rev. ed. 1937.)

Secondly, it may sometimes be hard to distinguish between the justifiability of the motive or motives which actually produced the population discrepancies, and the propriety of some motive or motives shown barely to have existed, but not shown to have had any causal connection with the population discrepancies. A perfect example of this is to be found in the so-called "protection of incumbents" factor in this case.

Appellant earnestly submits that the term "constituency-representative relations" is the more accurate term; indeed it is very hard to see why those who are so concerned about representation should stigmatize as a mere euphemism a term which brings in both parties to the representational relationship, see Appellees' Motion to Dismiss or Affirm, at p. 9. (The assumptions seem to be that while a Congressman may like his job, no constituency can like its Congressman, or care whether he continues to represent it or not—and that no Congressman can possibly learn to know his constituency well enough to serve it better than he can serve another constituency selected for him by, it may be, a young mathematician in Dallas.) Under either name, appellant would defend this motive as entirely proper, if the burden of that defense fell upon him on the facts herein.

The case is, however, that, while there is abundant showing of an interest (though with no party or ideological bias, see A. 186-7) in maintaining presently satisfactory representative-constituency relations, and in thereby protecting the accrued seniority of incumbents,

on the part of those who managed this districting bill, there is no showing whatever of any causal relation between this interest and the population discrepancies.

The very contrary is decisively shown by Appellees' own Plan B. On oral argument below, appellees have recognized that Plan B attains the same "incumbency-protecting" result as Senate Bill One (A. 320-321); on the other hand, Plan B has entirely negligible population variations. This latter result is attained in Plan B by splitting some eighteen more counties than does Senate Bill One, while otherwise generally following the Legislature's plan. If "incumbency" could have been "protected" either with or without population variation, it makes no sense to say that the desire to protect incumbents caused the population variations. (It must be left to appellees to explain how it could lie in their mouths to assail "incumbency protection" as a legislative motive, when by their own concession their own Plan B, repeatedly put forward by them as a good solution, attains, and was known by them to attain, just about the same result, in this regard, as S.B.1).

Indeed, what has just been said makes entirely clear what it is that efficiently and proximately caused these small population variations. If the difference between S.B.1 and the virtually zero-variation Plan B is that S.B.1 respects 18 more county lines than does Plan B (though both follow much the same general plan), it is plain that the immediate cause of the population discrepancies is respect for county lines. It is, then, respect for county lines, and only that, which must be defended as a "justification" for these small variations. The appellees explicitly recognized this, in oral argument in the court below (A. 321); the deposition of one of the legislative leaders (Rep. Jones) refers to it (A. 251). It is an interesting question whether some

Texas Senators did wrong in trying to set up a congressional district for a colleague, if that is what they did, but the question does not arise in this case, unless it can be shown, as it cannot be, that the only thing complained of, and the only thing so far held to violate the Constitution in cases of the present type—population variance—was caused by this their solicitude.

Is respect for county lines, then, an admissible justification for population variances as small as those found here?

This is not an easy question for appellant, if the continued full vitality of *Kirkpatrick* be assumed, because the *Kirkpatrick* opinion seems to be rejecting this justification:

> "Similarly, we do not find legally acceptable the argument that variances are justified if they necessarily result from a State's attempt to avoid fragmenting political subdivisions by drawing congressional district lines along existing county, municipal, or other political subdivision boundaries. The State's interest in constructing congressional districts in this manner, it is suggested, is to minimize the opportunities for partisan gerrymandering. But an argument that deviations from equality are justified in order to inhibit legislators from engaging in partisan gerrymandering is no more than a variant of the argument, already rejected, that considerations of practical politics can justify population disparities." 394 U.S. 533-4.

But appellant submits that the issue of county lines was not presented on the *Kirkpatrick* record with that clarity which makes it suitable to regard the passage just quoted as being permanently and generally dispositive of the county-line question, because the county-line defense in *Kirkpatrick* was proven sham, a fact

which must inevitably color judgment upon it.

The *Kirkpatrick* Court twice in its short opinion refers to the fact that the single switching of whole counties at district borders could have produced a more nearly equal plan:

> "Finally, the District Court found that the simple device of switching some counties from one district to another would have produced a plan with markedly reduced variances among districts." 394 U.S. at 529.

> "Legislative proponents of the 1967 Act frankly conceded at the District Court hearing that resort to the simple device of transferring entire political subdivisions of known population between contiguous districts would have produced districts much closer to numerical equality." 394 U.S. at 531-2.

A number of the easily possible and equalizing county shifts are described in the lower court's opinion in *Kirkpatrick*, 279 F. Supp. at 970 ff. One of the two judges who made up the District Court majority filed a short concurring opinion in which he said:

> "I do not condemn the 1967 Act because there were more equal plans defeated in the Legislature; nor do I condemn it because it divides St. Louis County between a number of districts. I believe the plan is unconstitutional because on its face and under the undisputed evidence it is not an attempt to divide the State of Missouri in Congressional districts that are as nearly equal in population as is practicable. *And this for the reason that it is obvious that entire counties can be moved to adjoining districts with a resulting substantial decrease in the variances of population in the present Act and because there is no evidence in this record that can be said to explain or justify why this was not done.*" 279 F. Supp. at 1004 (Em-

phasis added).

The Brief of the appellees in *Kirkpatrick*, in this Court, made this a principal point (p. 13 thereof), and offered maps showing some of the possible whole-county transfers.

The county-integrity issue in *Kirkpatrick* came to this Court, then, on a record in which just about the most conspicuous fact was that Missouri's claim of this "justification" could not be *bona fide*, since it had been shown that markedly smaller variances could have been attained by the simple device of switching counties at district borders — thus preserving county integrity quite as well as did the condemned plan. The above-quoted passage in the *Kirkpatrick* opinion was therefore uttered by a Court which must have known that, in *Kirkpatrick*, the county-line defense was a palpable sham.

Now appellant is not in a position to perform a rigorous mathematical demonstration that no possible shifts of whole counties at District boundaries would "better" the plan of S.B.1. None is really apparent, as so many were readily apparent in *Kirkpatrick;* the appellees have not so far brought any into view. If an algebraic or combinatory topologist (and *non constat* that the Texas Legislature contained one in June, 1971) could at this late time work out a few such transfers, that fact could hardly have much meaning in evaluating a practical political process, or its outcome. Nothing in the Record here establishes or tends to establish that the county-integrity justification is in this case anything but *bona fide*. Appellant earnestly contends that it may properly be and ought to be evaluated anew in the light of this clear distinction from *Kirkpatrick*.

When it is evaluated anew, there appear several reasons why a legislature might wish to respect county lines, where possible, in constructing Congressional Districts.

First, there is the difficulty created for a county government when it must deal with two Congressmen with respect to its relations (most commonly perhaps as grant-recipient) with the national government. Every Congressman does "casework" for his constituents, including governmental units within his District. "Counties have created or expanded agencies to distribute funds under state and federal programs." Grant and Nixon, STATE AND LOCAL GOVERNMENT IN AMERICA 301 (1963) See also, Bollens, AMERICAN COUNTY GOVERNMENT 27-28 (1969). Research performed by the staff of a Texas Congressman shows that a considerable part of the case-load of some Congressmen consists in dealing with the desires and needs of county government; *Dividing Counties Between Congressional Districts* (Remarks of Hon. Bob Eckhardt, 118 CONGRESSIONAL RECORD E8217 (Sept. 28, 1972). See also a speech of Senator Edmund Muskie, *Congress and the Counties*, 31 AMERICAN COUNTY GOVERNMENT 15-18. This casework is a natural and accepted part of the function of representation, and would obviously be at its most important in rural Texas, where the county government is often the most important or the only general governmental organization on the scene. Splitting of a county between two Congressional districts plainly means a duplication of effort on the part of county officials maintaining Congressional contacts, and perhaps even some troublesome political conflict. (For growing county-federal relations, see Duncombe, COUNTY GOVERNMENT IN AMERICA 135 ff., 248 (1966).

Secondly, splitting a county between two Congres-

sional districts complicates not only the ballot but also the common political participation of residents of the county. Effective politics is a matter of alliances and groupings; these are facilitated when they can be formed for more than one purpose. This would be especially important in the many sparsely populated rural counties in Texas, where the necessity for formation of groups along multiple lines might readily exhaust the energies of the people. (On the county as unit of political organization, see Duncombe, *op. cit. supra*, 7)

Thirdly, there is a symbolic function in county-splitting. The disregard of county unity tends to downgrade the county in importance, at a time when, after long eclipse, it appears to be on the way to greater usefulness. See *Avery* v. *Midland County*, 390 U.S. 474 (1968), especially as to the "increasing importance" of the county today, 390 U.S. at 481. See also Grant and Nixon, *op. cit. supra*, 302; Duncombe, *op. cit. supra*, 28. Symbolism is beyond doubt a living part of politics; a legislature desiring to contribute to the trend noted in *Avery* might judge that both practical and symbolic reasons led to respect for county integrity in districting for Congress.

As to all three of these considerations, it is not necessary that this Court be finally convinced of their rightness. All that is necessary is that this Court recognize them as legitimate, rational legislative judgments, judgments the Legislature (on the basis of general political knowledge and feelings available to legislatures but hard to read into a judicial record) ought to be allowed to make, where, as here, the result is no more than a very small population variance. When they are viewed in this light, it is hard to see how it can be said they are unreasonable.

The smallness of the population variance is crucial. No one would contend that respect for county lines would justify a 50% variation from the "ideal". It is submitted that no one would contend that a plan was invalid which varied from "ideal" by as much as .05%, even if it were clearly proved or conceded that this happened as a result of respecting county lines. The question must not be whether county integrity is a total justification for any variation however large, nor yet whether county integrity is an inadmissible justification for any variation, however small. If neither of these extreme propositions is acceptable, then the right rule must be that respect for county integrity may justify some reasonably small variations. It is submitted that the variations in this case, aggregating at their highest 4% up and down, ought to be held reasonably justified by that respect for county integrity which, on the face of the map, evidently moved the legislature, both as a conscious motive and as a subjacent assumption. (The size of the variations clearly distinguishes *Kilgarlin* v. *Hill*, 386 U.S. 120 (1967), where county integrity was rejected as a justification for variations aggregating some 30%, and may even in itself distinguish *Kirkpatrick*, where the aggregate variations were about half again as high as the ones in this case—though the more impressive distinction of *Kirkpatrick* lies in the proven sham character of the county-line defense in that case.)

Summary on II

Kirkpatrick, then, was a case wherein there had been found bad faith in the most classic sense—the sense, namely, of conscious and stubborn intent to perpetuate the very wrong the apportionment cases had struggled against. It was a case in which the county-integrity

justification was plainly shown to have been *mala fide*. The present case, on the other hand, is one entirely lacking any evidence (or even argumentative suggestion) of intent to wrong any section or interest; it is a case in which county integrity—the one value distinguishing S.B.1 from the zero-variation Plan B., and hence the only value legitimately to be judged as a "justification" for the variations in S.B.1—is untainted by any suggestion of bad faith.

There are other distinctions. For example, the lesser-variation House Bill in this case, was not "rejected without consideration" (394 U.S. at 532) but was a part of the input to the conference committee (A. 257-8). The overall variation in *Kirkpatrick* was nearly half again as much as the variation in this case. But the two distinctions argued above are undoubtedly the most important.

The cases are different, then, on substantial common-sense grounds. *Kirkpatrick* need not be held to rule this case. If it does not rule it, if a new look is permitted, appellant submits there is no doubt of the appropriate outcome. This case shows an *average* variation of .745%, a top-to-bottom variation of 4.1%, and a ratio of smallest to largest district of 1:1.04. Our record shows no animus and no settled bias in any direction—nothing but what seemed to all concerned a reasonable compromise. The small variations that exist are entirely attributable, as has been shown, to respect for county integrity, a value entirely sufficient to justify these very small variations. There is simply nothing in such a case which ought to lead this Court to upset the judgment of the Texas Legislature.

(It may be added that, if *Kirkpatrick*, despite the foregoing considerations, be regarded as squarely

holding that respect for county integrity may never justify any population variance, however small, then *Kirkpatrick* ought to be modified at this time, at least to the extent of altering this quite unjustifiably inflexible rule.)

III

Whatever view this Court may take as to the preceding Points, the judgment entered in the District Court must evidently be reversed, since there was no conceivable substantive warrant for that court's adoption of Plan C, and the procedure leading to that adoption was grossly defective.

Appellant earnestly contends that this Court, for the reasons already given, ought to uphold Senate Bill One and reverse this judgment on that ground. But even if this should not occur, it is submitted that the judgment below cannot stand, since the lower court's selection of Plan C is manifestly erroneous, is totally unsupported by so much as a syllable in the Record or even in plaintiff-appellees' written and oral arguments, and occurred after a period of consideration so short as to establish, in itself, the impossibility of the Plan's having been studied by the lower court with the thoroughness appropriate to so drastic and deep-cutting an incursion into Texas's political institutions.

Appellees' original complaint, filed on October 26, 1971, set forth a plan, called Plan B, which rather closely followed S.B.1, but which (by dividing some 18 counties) produced a near-zero set of district deviations from "ideal".

On January 10, 1972, after nearly all evidence in the case had been taken, appellees filed an "Amended Complaint", whereto was annexed, in addition to Plan

B, a new Plan C. This plan radically and fundamentally altered the Congressional districting of Texas, entirely disregarding the Legislature's Plan, as the latter was embodied in S.B.1. *This Plan C actually showed greater population variations than Plan B.* It was thus introduced in appellees' Amended Complaint, at p. 8 (A. 38):

> "J. That had the legislature desired to enact a statute consonant with the mandate of Article I § 2 of the U. S. Constitution, that is a plan which made each district as compact and contiguous and as nearly equal in population to each other district as practicable, taking into account solely population and not taking into account "social", "cultural", "economic" or "other factors" including preservation of incumbent congressmen, it could have enacted a plan the same as or substantially similar to that plan set forth in Exhibit C annexed hereto and herewith incorporated by reference as though set forth at length herein. That such plan is hereinafter referred to as "Plan C". That Plan C provides for districts that are significantly more compact and contiguous than those set forth in Plan A. That the population difference between the largest and smallest district proposed under Plan C is 1323 persons which is less than three tenths (3/10) of one per cent (1%) or 0.0028."

There was and is not a word in the whole Record bearing in any way on the practicality or wisdom of Plan C. (Indeed, the disclaimer just quoted of any taking account of social, cultural or economic factors, or of other factors *eiusdem generis* with these, seems to constitute, in effect, a disclaimer of wisdom; this Court has never said that the disregard of such evidently relevant factors is a constitutional requirement or even a virtue. How could it be either?)

On January 21, 1972, eleven days after the first ap-

pearance of Plan C in the case, a "trial" was held before the three-judge District Court. This "trial" actually consisted of argument, since evidence had already been taken in deposition form.

On this occasion, apellees' counsel said not one word about Plan C. On the other hand, both counsel for appellees insistently recommended the adoption of Plan B—an aggregate of six times. (A. 317, 319, 321, 322.) In these recommendations, it was stressed that Plan B followed the Legislature's general plan, while shaving down population variances. (A. 320.) (This was in fact done by cutting counties; see *supra.*, II, B.)

On this occasion, no Judge asked any questions about Plan C.

The next morning, January 22, 1972, the court reconvened and announced its judgment. The following is absolutely all that is said about Plan C (and, indeed, about the whole question of selection of a plan):

> "Defendant has not submitted any plan of reapportionment as an alternative to S.B.1. Plaintiffs have proposed two plans, B and C. Plan B is based on S.B.1, but has a significantly lower deviation than S.B.1. Plan C is based solely on population and is significantly more compact and contiguous than either S.B.1 or Plan B. The population deviation in Plan C is less than 3/10 of one percent (.0028). The Court has considered Plans B and C, as well as the plan submitted by the intervening plaintiffs, and concludes that Plan C best effectuates the principle of "one man, one vote" enunciated by the Supreme Court."

(It is to be noted that this language does not include comparison of Plan B and Plan C *as to population variance*, the only constitutional value at issue in the case; as already pointed out, Plan B was "better" than Plan C in this regard.)

Now the law of remedies in redistricting and reapportionment cases is new. The situation is not, therefore, that a long line of precedents establishes the wrongness of the step taken by the District Court. The situation is rather one which calls for this Court's establishment of minimal standards, based on principles of federalism, of due process, and of equity. The action of the court below, it is submitted, failed to rise to the minimally acceptable in at least the following respects.

First, the court below apparently conceived its duty to be merely that of selecting among plans submitted by the parties. (In effect, that meant plans submitted by plaintiffs and plaintiff-intervenors; the State's law officers up to this point had had no occasion to submit any plan, standing as they did on the position that S. B. 1 was acceptable. They would have been in violation of duty had they done so in advance of strict necessity, for the submission of such a Plan would inevitably have been construed as an offer to "settle" the case on terms short of validation of Senate Bill One, which it was their duty to defend.) In making this assumption, it is submitted, the court below grievously erred. The fact that a group of plaintiffs have convinced a court that the legislature's bill is unconstitutional is no ground whatever for the inference that any of the plans submitted by the plaintiffs is optimal or even acceptable. Practically, what this means is quite clearly that a court that had decided that S.B.1 was unconstitutional ought to have announced that conclusion and opened itself to proposals from all parties at least, and perhaps from all citizens. (The Presiding Judge at the trial below rejected the idea of appointing a master, saying, "That would be just one more idea, one more plan, one more than we have". (A. 323)

Secondly, even if the court below had been right in its assumption that it must or properly might limit itself to plans submitted by plaintiffs, it ought clearly to have selected Plan B. (*Cf. Preisler* v. *Secretary of State of Missouri*, 341 F. Supp. 1158 (W.D. Mo. 1972).) Of the plans submitted, that plan followed the Legislature's judgments on political points most closely, changing the legislative scheme only as far as was needful to reduce population variance to virtual zero. Its population variance was less than that of Plan C.

In their Motion to Dismiss Or Affirm, appellees (now in the position of having to defend the adoption of Plan C, which they never recommended) have said:

> "*The debasement of the vote is of secondary importance.* It is the calculated, foreseeable consequence of '. . . the approach to redistricting . . .' which, under all the evidence was (1) to protect incumbents (the 'incumbency factor'; or, euphemistically, 'maintenance of constituency-congressman relations'); (2) to choose who among them would be elected to fill a vacancy; and (3) to preserve geo-political lines." Motion to Dismiss or Affirm, p. 9 (Emphasis supplied).

Elsewhere in the same document they say:

> "The meritorious aspect of Plan B is that it reduced the 'top to bottom' deviation to less than one-tenth of one per cent as opposed to 4.1% as enacted by the Legislature (and 'administratively corrected'). This faithful adherence to the Legislative intent *may well have been the vice* that precluded the adoption of Plan B, even conditionally; and compelled the Court to conclude . . . 'that Plan C best effectuates the principal of "one man, one vote" enunciated by the Supreme Court.'" *Ib.*, p. 10 [Emphasis supplied]

On the startling view that emerges from a synthesis of these two passages, the small population variance, being "*of secondary importance*," simply allows a court to get its hands on the Legislature's districting plan. Having passed this jurisdictional hurdle, the court may (or even must, it would seem, if following them is a *vice*) disregard or revise all the purely prudential and political judgments of the Legislature, even when it has before its eyes a plan (in this instance Plan B) that eliminates the population disparity which was the sole constitutional evil complained of, while following the Legislature in other ways. It is simply unbelievable that this Court will sanction such a proposition as that.

Thirdly, the summary adoption of Plan C followed a process of deliberation and consideration which fell far below what ought to be required. It is ironic that the plaintiff-appellees' Brief in the court below should have contained this paragraph:

> "h. *The Legislative Process Used to Enact S.B.1 Evidences a Lack of Good Faith Effort to Draw Districts as Compact, Contiguous and Numerically Equal as Practicable.*
>
> From the outset the members of the legislature accepted and acquiesced in the idea that a conference committee would draft a bill that would pass the legislature and become the law of the State of Texas in regard to the design and implementation of the redistricting of congressional districts in this state. Committees were appointed to study this problem and their reports were sent to the respective houses where they were passed and forwarded to the conference committee.
>
> What is apparent, however, is the fact that even within the committees designing the initial bills that would go before the respective houses there was not the opportunity to examine, to study and

question, to propose and counterprose (sic) and to give just consideration to perhaps the most important piece of legislation to be enacted in that session."

What, one may ask, would appellees have said if the Legislature had appointed a three-man committee to deal with apportionment, delegating to that committee power to act, and if that committee, after being given Plan C, together with the above-quoted description thereof in the Amended Complaint, had eleven days later (without in any way so much as indicating that it was taking Plan C seriously, without hearing any testimony or in any other manner collecting data or opinion on that Plan and without giving any reasons worthy of the name) announced that Plan C was to be the plan "for the congressional districts of the State of Texas"? Yet what the court below did was even less acceptable than that, for its action not only adopted a plan without any input whatever on the wisdom of that plan, but simultaneously rejected a plan which would at least have approximated the Legislature's judgments, while serving the only constitutional value concerned somewhat better than did the adopted plan.

Appellant submits, then, that the adoption of Plan C was plainly erroneous and requires reversal. But appellant reiterates that Senate Bill One ought to be held valid, so that the present remedial question need never arise.

CONCLUSION

For the reasons given, the judgment of the court below should be reversed, and the cause remanded with directions that judgment be entered for the defendant-appellant.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972
No. 71-1623

BOB BULLOCK, *etc.*,

Appellant

v.

DAN WEISER, *et al.*,

Appellees

On Appeal from the United States District Court
for the Northern District of Texas
Dallas Division

APPELLEES' BRIEF ON THE MERITS

QUESTIONS PRESENTED

1. Whether the definition of the term 'as nearly equal as is practicable' contained in *Kirkpatrick* v. *Preisler* is substantively erroneous.

2. Whether the deviations from absolute equality contained in S.B.1 resulted despite a good faith effort, or are otherwise legally justified.

3. Was the remedy afforded by the trial court — the conditional imposition of Plan C — warranted under the record?

SUMMARY OF ARGUMENT

Wesberry v. *Sanders*, 376 U.S. 1 (1964) held that Article I, §2 of the Constitution requires that congressional districts be as nearly equal as is practicable.

Reynolds v. *Sims*, 377 U.S. 533 (1964) held that the Equal Protection Clause of the 14th Amendment requires that a state make a good faith effort to achieve equality in its own legislative apportionment.

Recognizing that no arbitrary point, above which deivations from equality can be said to be so trivial as to not give rise to a Constitutional right, can exist; and further recognizing that to sanction arbitrary approximations of equality is to encourage them, this Court held in *Kirkpatrick* v. *Preisler*, 394 U.S. 526 (1969) that "as nearly equal as practicable" requires the state to make a good faith effort to achieve absolute equality in congressional districting.

The holding of *Kirkpatrick* does not preclude deviations which result despite a good faith effort, nor those which result from the systematic, non-arbitrary application of a rational state policy, e.g. allowances for growth or decline of population.

Appellees argue that the deviations in S.B.1 did not result despite a good faith effort to achieve absolute equality, in that no good faith effort was made.

The very architects of the bill severally testified that they thought that so long as the deviations were from four percent to ten percent, the constitutional mandate was satisfied.

It was generally agreed that the congressional redistricting bill would be written in a conference committee. This fact seriously limited participation in its construction and caused it to be the will of only a few legislative leaders.

The House of Representatives twice passed a bill having a maximum deviation of slightly more than half the deviation of the bill finally enacted. This bill was rejected solely for reasons of partisan politics.

Preservation of incumbents, partisan politics in filling a "vacant" seat, and preservation of county lines (at least in rural areas) were the primary considerations in the enactment of S.B.1.

Considered in the context of the willingness of the legislature to accept deviations ranging up to ten percent, and considering the predominant motivations behind in the bill, Appellees submit that S.B.1 was not the product of a good faith effort to achieve absolute equality.

Justification is not shown. While an effort was made, apparently, to preserve county lines in rural areas, county lines were freely cut when necessary to flesh out a predominantly rural district with urban population. Consideration of population trends, if any, was not done on a systematic, statewide basis. The finding of the trial court that no justification is shown should not be disturbed.

By way of remedy, the trial court conditionally adopted for implementation a plan of congressional districting having a maximum deviation of .28 percent as opposed to the maximum deviation of 4.1 percent

in S.B.1. The court had several plans before it, and was aware of the history of disenfranchisement in the State of Texas. Under these circumstances, the conditional adoption of a plan was appropriate. As at all times heretofore, the legislature is free to adopt any other plan consistent with the constitutional mandate.

ARGUMENT

I

WHERE A STATE IS ENTITLED TO MORE THAN ONE CONGRESSIONAL REPRESENTATIVE, ARTICLE I §2 OF THE CONSTITUTION REQUIRES THAT SUCH STATE MAKE A GOOD FAITH EFFORT TO THE END THAT EACH REPRESENTATIVE SHALL BE ELECTED BY EQUAL NUMBERS OF PERSONS. NEITHER THIS COURT IN *KIRKPATRICK* v. *PREISLER*, NOR THE TRIAL COURT IN THE CASE AT BAR HAS ADOPTED OR APPLIED ANY DIFFERENT STANDARD.

Appellant, under his first point, asserts that "[T]he case of *Kirkpatrick* v. *Preisler*, 394 U. S. 526 (1969) . . . laid down a standard of strictest arithmetic equality . . . attributing to small variations a decisive constitutional significance". (Appellant's Brief, p. 7-8). Upon the assumption that this reading of *Kirkpatrick* is correct, Appellant then argues that there is no basis in law or in fact for such a rule and therefore ". . . *Kirkpatrick* ought at this time to be receded from by a short distance". (Id., p. 11).

Appellees respectfully believe that reading *Kirkpatrick* as being a radical departure from, or unwarranted

extention of well-settled, well-reasoned principles of constitutional law is erroneous. Appellees will also show that the record in this case amply supports the application of *Kirkpatrick* to the case at bar.

It is the Appellant's position that from all the relevant information (the wording of the Constitution itself, the reports of the debates prior to adoption, and the documents and speeches of the authors in support of ratification) the Constitution cannot require mathematical exactitude. Appellant then says that since *Kirkpatrick* struck down relatively minor deviations from mathematical exactitude, it must be wrong. This argument erroneously focuses on the numbers involved — the end result of the legislative effort, to the exclusion of the effort itself.

The emphasis in *Kirkpatrick*, as in the case at bar, was on the legislative effort — not the end result alone. This is the approach and emphasis in all cases of congressional districting and legislative apportionment (this being one of the common bonds between the two types of cases).

Significantly, *Kirkpatrick* relies on only two cases: *Wesberry* v. *Sanders*, 376 U.S. 1 (1964) and *Reynolds* v. *Sims*, 377 U.S. 533, (1964).

The primary question in *Wesberry* was whether the legislative action of congressional districting gave rise to a right protected by the Constitution and was therefore subject to judicial scrutiny. After deciding this question in the affirmative, the Court, on the merits, held that:

"... construed in its historical context, the command of Art. I, §2, that Representatives be

chosen 'by the People of the several States' means that as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's." (376 U.S., 8-9).

No further definition of the term "as nearly as is practicable" is given, except in the concluding paragraph of the Court's opinion wherein it is stated:

"While it may not be possible to draw congressional districts with mathematical precision, that is no excuse for ignoring our Constitution's plain objective of making equal representation for equal numbers of people the fundamental goal for the House of Representatives. This is the high standard of justice and common sense which the Founders set for us." (376 U.S., 18).

The next major case considered by the Court was *Reynolds* v. *Sims*, supra. While it involves reapportionment of a state legislature under the Equal Protection Clause of the 14th Amendment, it derives its holding from *Wesberry*, and goes a long way toward defining "as nearly as is practicable". The definition of the term in *Wesberry* was one of exclusion — stating what it was not. The definition in *Reynolds* is partially exclusionary, but goes further:

"By holding that as a federal constitutional requisite both houses of a state legislature must be apportioned on a population basis, we mean that the Equal Protection Clause requires that a State *make an honest and good faith effort* to construct districts . . . as nearly equal of population as is practicable. We realize that it is a practical impossibility to arrange legislative districts so that each one has an identical number of residents, or citizens, or voters. Mathematical

exactness or precision is hardly a workable constitutional requirement." (377 U.S., 577) (emphasis supplied).

Thus evolves the holding of *Kirkpatrick* that:

"... the command of Art. I, §2, that states create congressional districts which provide equal representation for equal numbers of people permits only the limited population variances which are unavoidable despite a good faith effort to achieve absolute equality, or for which justification is shown". (394 U.S., 531).

See also *Wells* v. *Rockefeller*, 394 U.S. 542 (1969).

The historical references in *Wesberry* constitute a sound basis for defining "as nearly as is practicable" in the Equal Protection Clause terms of "good faith effort".

The 14th Amendment of course only operates on the States, as a limitation on their powers.

After tracing the evolution of the "Great Compromise", the Court states:

"William Samuel Johnson of Connecticut has summed it up well: 'in *one* branch the *people* ought to be represented, in the *other*, the *states*." (376 U.S., 13) (emphasis in original text).

Bearing in mind the polarity of strongly held convictions which led to the Great Compromise, it cannot be doubted that the Framers intended any less of a cleavage than that articulated by William Samuel Johnson, quoted above.

Further, considering that until the ratification of the 17th Amendment in 1913, senators were elected by the

state legislatures, there can be no doubt that the Framers did not intend that the legislatures of the several states should be able to control who was to represent the people of those states in the House of Representatives.

Thus it is appropriate that the limitations on the powers of the state in the 14th Amendment should, by analogy, operate as a limitation on the power of the state to interfere with the rights of the individual under Article I, §2.

Also, it would be anomalous to say that the state legislature must make a good faith effort to achieve equality in apportioning itself; but need not do so in apportioning the state's congressional seats among its populace. As stated in *Wesberry*:

> "It would defeat the principle solemnly embodied in the Great Compromise — equal representation in the House for equal numbers of people — for us to hold that, within the states, legislatures may draw the lines of congressional districts in such a way as to give some voters a greater voice in choosing a Congressman than others. The House of Representatives, the Convention agreed, was to represent the people as individuals, *and on a basis of complete equality for each voter.*" (376 U.S., 14) (emphasis supplied).

A. The record in this case amply supports the conclusion of the court below that no "good faith" effort to achieve equality was made.

The thrust of Appelles' argument is that the Constitution, as interpreted in *Wesberry* v. *Sanders*, *Reynolds* v. *Sims*, *Kirkpatrick* v. *Preisler*, and *Wells* v.

Rockefeller, requires that the legislature make a good faith effort to achieve absolute equality — not that absolute equality be achieved.

It is Appellees' position, as it has been throughout this litigation, that no such good faith effort was made by the Texas legislature; and that S.B.1 was not the product of such an effort. As in *Kirkpatrick*, ". . . it is simply inconceivable that population disparities of the magnitude found (in S.B.1) were unavoidable." (394 U.S., 532).

Appellees made the following statement in their *Motion to Dismiss or Affirm* (at page 9):

> "The debasement of the vote is of secondary importance. It is the calculated, forseeable consequence of '. . . the approach to redistricting' which, under all the evidence was (1) to protect incumbents . . . , (2) to choose who among them would be elected to fill a vacancy; and (3) to preserve geo-political lines."

Appellant, in his response to that pleading, suggests that this statement "foreshadows an entirely new theory — one that cries out for examination in this Court."

It is not Appellees' intention to assert any "new theory." Debasement of the vote is still the premise upon which Appellees' suit depends. Perhaps what Appellees should have said was

> "The debasement of the vote <u>was</u> of secondary importance <u>to the legislature</u>."

The point which Appellees were, and are trying to make is that the legislature did not set out solely to

make the votes of one group of persons more valuable than others as an end in and of itself — the desired ends (preservation of incumbents, creation of "safe seats", and preservation of geo-political lines) were of much more immediate and practical consequence.

The unjustifiable weighting of votes may have been the desired end in *Wesberry* and *Reynolds,* but as the Court states in the latter case:

> "One must be ever aware that the Constitution forbids 'sophisticated as well as simple-minded modes of discrimination." (377 U.S., 563).

In the case at bar, the Court is confronted with a more sophisticated as opposed to "simple-minded" discrimination. But, as the record amply demonstrates, it is discrimination none the less.

As will hereinafter be shown, the preoccupation of the legislature with factors other than equality of population amongst the districts is such as to preclude any serious contention that the deviations in S.B.1 resulted despite a good faith effort to achieve equality, or are otherwise justified.

1. *The record shows that the dominant theme of S.B.1 was to protect incumbent congressmen.*

This case squarely presents to the Court the question: to what extent, if any, may the legislature consider the protection of incumbents in establishing congressional districts?

Appellant asserts that this case may be distinguished from *Kirkpatrick* in that the latter ". . . was a case wherein there had been found bad faith in the

most classic sense — the sense, namely, of conscious and stubborn intent to perpetuate the very wrong the apportionment cases had struggled against." (Appellant's Brief, p. 79).

The concept of equal representatives for equal numbers of persons articulated in *Wesberry* derives from the Convention debates which resulted in the Great Compromise.

> "The history of the Constitution, particularly that part of it relating to the adoption of Art. I, §2, reveals that those who framed the Constitution meant that, no matter what the mechanics of an election, whether statewide or by districts, it was population which was to be the basis of the House of Representatives." (376 U.S., 8-9).

See also the quotation from the speech of William Samuel Johnson, set forth at page 7, ante.

It is thus submitted that insofar as the legislature of the State of Texas has arrogated unto itself the right to determine who shall represent the people of the State of Texas in the House of Representatives, to the deliberate detriment of equal representation for equal numbers of persons, it has, at this late date, flatly repudiated the Great Compromise and has thereby manifested bad faith "in the classic sense."

Examination of the record in this case leads inescapably to the conclusion that S.B.1 was the product of a pervasive desire to protect incumbents and prevent their having to run against one another.

Respectfully, the Court's attention is directed to the following testimony:

Speaker of the House Mutscher, A. 80-81; 83-84;

Lt. Governor Barnes, A. 96-99; 106-108;

Sen. Word (Chairman of the Senate Committee) A. 169-170; 176-177;

Rep. Jones (Chairman of the House Committee) A. 227-238;

Sen. Mauzy (A committee member) A. 270-283;

Rep. Holmes (A committee member) A. 150-155.

According to the consensus of the testimony, by tradition congressional redistricting bills are written in conference committee. The work of the respective houses is merely a staking out of positions with a view toward a compromise in the conference committee. As stated by Senator Mauzy:

> "... the purpose of that is so that the Lieutenant Governor can work his will as to the Senate conferees and the Speaker can work his will as to the House conferees. That's common knowledge among members of the legislature." (A. 276).

In the case at bar this clash of wills prevented the passage of any bill by both houses and necessitated a special session of the legislature. The principal contentions which necessitated this situation were the dispute over who should "have" the second district in East Texas (a "vacant seat") and how the lines of the new twenty-fourth district should be drawn. (A. 276-277).

With regard to the latter point, Senator Mauzy testified:

> "... the committee was to draw the lines in the Fifth Congressional District in a way that Con-

gressman Cabell wanted them. They were to draw the lines in Tarrant County the way Congressman Wright wanted them drawn. They were to draw the lines for the Third Congressional District the way Congressman Collins wanted them drawn. They were then to give Congressman Teague in the Sixth District whatever population was necessary on the south ends of Dallas and Tarrant Counties to flesh out his district. And what was left was to be the Twenty-fourth District." (A. 277).

All the witnesses admitted that the committees of the two houses made two trips to Washington during the regular session to obtain the views of the incumbent congressmen. How these views impacted on the final bill is clearly shown in the testimony of Senator Mauzy. (See, please A. 278-282), particularly at A. 282. The story which is unfolded in these pages is, in the estimation of Appellees, chilling.

The dynamics of how the shape of a district affects one's chances of election is also set forth in Senator Mauzy's testimony appearing at A. 272-273.

S.B.1 pitted only two incumbents — Congressman Purcell (a Democrat) against Congressman Price (a Republican — one of three from Texas serving in the 92nd Congress). It is a legitimate deduction from the evidence that the heavily Democratic legislature, when confronted with the inevitability of at least one incumbent-versus-incumbent race, chose to subject at least one Republican to that inconvenience. Both of these gentlemen ran in the 13th District, and Congressman Price was re-elected.

Another interesting irony is the situation of Congressman Cabell (Democrat), who for years ran vir-

tually without Republican opposition in the 5th District, comprised in the major part of the east portion of Dallas County. It is apparent from the testimony of Representative Holmes (A. 150-154) and that of Senator Mauzy (A. 277, 279-280) that Congressman Cabell exercised some efforts to remove ten predominantly black Dallas precincts from his district. Historically, these precincts voted for Congressman Cabell's more liberal opponents in the Democratic primary; but Congressman Cabell usually carried them against his Republican opponent, if any, in the general election. What the framers of S.B.1 did not forsee was that Congressman Cabell would be opposed by an unusually strong Republican challenger in the recent general election — with the result that Congressman Cabell was in fact defeated.

These illustrations are not made for the purpose of interesting this Court in the minutae of Texas politics. Their sole purpose is to demonstrate that the "shaping" of districts, as in the case at bar, has a profound, if not determinative effect on who shall represent those districts.

While the case law is not definitive, it does support Appellees' contentions.

This Court held, in *Kirkpatrick* that:

> "Problems created by partisan politics cannot justify an apportionment which does not otherwise pass constitutional muster." (394 U.S., 533).

The notion that the "incumbency factor" has a legitimate place in the reapportionment equation was squarely rejected in *Klahr* v. *Williams*, 313 F.Supp.

148 (U.S.D.C., Ariz., 1970) and in *Bussie* v. *Governor of Louisiana*, 333 F.Supp. 452 (U.S.D.C., E.D. La., 1971). The former case was before this Court, *sub nom. Ely* v. *Klahr*, 403 U.S., 108 (1971); and the latter, *sub nom. Taylor* v. *McKeithen*, 92 S.Ct. 1980 (1972); but this Court has not had occasion to articulate a definitive opinion. However, the views expressed by the respective district courts are, Appellees submit, correct ones and should be adopted where the issue is squarely presented, as in this case.

2. A theme of equal importance was the concern over who would fill new or "vacant" seats.

There can be no doubt that the final form of S.B.1 was delayed by, and is the product of the contest between the Senate and House of Representatives as to whether Senator Wilson or Representative Haynes would run for the Congress representing the Second district. See, please, the testimony of Senator Mauzy (A. 279-271; 288-292); Speaker Mutscher (A. 86-87); Representative Jones (A. 262-264); Senator Word (A. 185-186).

The record reveals, without contradiction that the House of Representatives twice passed and sent to the Senate a bill with a maximum deviation "top-to-bottom" of 2.5%. This bill was twice rejected by the Senate. According to Senator Word (A. 185) it was because of the unaesthetic appearance of the Second District, which was roughly in the shape of a backward "C". (The plan was labeled by the press as the "backward 'C' plan"; and has subsequently been referred to as such throughout this litigation). The district acquired this singular shape in order to

remove Senator Wilson's home county from the district, and at the same time embrace in the district the home county of Representative Haynes.

A perhaps more accurate version of the senate rejection of the "backward 'C' plan" is gleaned from the testimony of Senator Mauzy (A. 290, 292).

Close examination of the map depicting the final bill (S.B.1) lends strong credence to this analysis. The examination of such map (which appears at page 44B of Appellant's Jurisdictional Statement) clearly discloses that in eliminating the "backward C" shape of the Second District, the conference committee did no more than shift it to the First District.

Whatever may be said in defense of protecting incumbents, surely it has not the slightest application to this situation. Nothing could be more repugnant to the spirit of the Great Compromise, or to the letter of Article I, §2, of the Constitution which is its product, than the spectacle of two houses of the legislature intractably deadlocked over which of their number shall be chosen to fill a "vacant" seat.

The quotation from Kirkpatrick (394 U.S., 533) rejecting the place of partisan politics in apportionment is singularly appropriate here also.

3. *A bill with far closer equality was twice passed by the lower House and rejected as politically unacceptable by the Senate.*

The facts with respect to this sub-point are set out in detail under the preceding sub-point. In sum, they show that the redistricting committee of the House during the regular session reported out a congressional

redistricting plan (H.R. 782) having a "top-to-bottom" disparity of 2.5%. The Senate-House conferees could not agree on a compromise.

During the special session, the House committee reported this same bill out; and once again, it was passed by the House and sent to the Senate, where it was rejected. S.B.1, containing a magnitude of disparity almost twice as great, was finally agreed upon by the conference committee. The only credible reason in this record for this rejection of H.R. 782 was that it preferred Representative Haynes over Senator Wilson in the Second District.

Appellant seeks to distinguish the case at bar from *Kirkpatrick* on this point by saying that the lesser deviation House plan was not rejected "without consideration". (Appellant's Brief, p. 80). The opinion of this Court in *Kirkpatrick* makes two references to the rejection of the lower deviation plan, the first at 394 U.S., 529; and the second at 394 U.S., 532. Only the latter reference employs the term "without consideration". The opinion of the district court more fully discusses the quantum of consideration given the lower deviation plan by the Missouri legislature. See *Preisler* v. *Secretary of State of Missouri*, 279 F.Supp. 952, 965-966.

Viewed in this context, it may be submitted that the statement "without consideration" was more of a commentary on the efforts of the Missouri legislature, than a statement of fact. In any event, the consideration given by the Texas Senate to H.R. 782 was certainly no greater than the consideration given by

the Missouri legislature to its lesser deviation plan, as disclosed by the opinion of the district court.

Unless the position of Appellees under the preceding subpoint is wholly wanting in merit, the adoption of a plan having almost double the population disparity of the plan rejected, under the facts of this case, negates any possible argument that S.B.1 is the product of a good faith effort to achieve absolute equality.

4. It was generally understood that de minimus *variations were acceptable. This factor caused the legislature to place undue emphasis on the above factors, to the detriment of equality of representation.*

Representative Jones testified (A. 250-254) that to the best of his knowledge a "top-to-bottom" deviation of ten per cent was acceptable; Representative Holmes, four per cent (A. 143); and Speaker Mutscher, six per cent (A. 82-83). Senator Mauzy testified that the majority of the Senate committee felt that five per cent would be acceptable. (A. 275).

In *Kirkpatrick*, this Court stated:

> "The whole thrust of the 'as nearly as practicable' approach is inconsistent with adoption of fixed numerical standards . . . " (394 U.S., 530);

and

> "We can see no nonarbitrary way to pick a cutoff point at which population variances suddenly become *de minimus*. Moreover, to consider a certain range of variances *de minimus would encourage legislators to strive for that range rather than for equality as nearly as practicable.* (394 U.S., 531) (Emphasis supplied).

The mischief which this Court foresaw in *Kirkpatrick* was demonstrably present in the case at bar. Senator Mauzy testified:

> Q. [By Mr. Fischman]: " . . . Then their basic approach then [sic], was to take care of the Congressmen and then we'll see if it fits the numbers?"
>
> A. [Senator Mauzy]: "To take care of the Congressmen and to make it fit the numbers within five per cent, I think would be a more accurate way to put it." (A. 277-278).

Speaker Mutscher also put it accurately:

> Q. [By Mr. Fischman]: "And is it your testimony here today, Sir, that those deviations could not possibly have been avoided?"
>
> A. [Speaker Mutscher]: "The — the — the approach to redistricting determines as to what can be avoided." (A. 87).

Had the Texas legislature felt itself bound to strive for equality, conceivably its "approach to redistricting" would have been entirely different; and, it is submitted, this case would never have arisen.

B. No legal justification for the demonstrably avoidable deviations is shown under this record.

1. Preservation of county lines, even if an acceptable justification is not supported by the record in that such lines were cut in many instances, particularly when it was necessary to 'flesh out' a predominantly rural district with urban population.

The preservation of county lines as a justification for deviations from equality has been rejected by this

Court. Such rejection with respect to congressional redistricting cases is strongly implicit in *Reynolds* v. *Sims*, 377 U.S., 577-578; and is explicit in *Kirkpatrick*, 394 U.S., 533-534; and *Wells* v. *Rockefeller*, 394 U.S., 546.

Whatever merit the preservation of geo-political lines may have, arguments in its favor are inapposite in the case at bar.

Firstly, there is no clearly demonstrable instance where the deviation in a particular district under S.B.1 can be attributed, under the record, to preservation of county lines.

Secondly, but perhaps more importantly, county lines were cut when it was expedient to do so. Such lines were cut whenever it was necessary to flesh out a rural district with urban population. Referring to the map depicting S.B.1 at page 44B of Appellant's Jurisdictional Statement, the following instances are discernable:

(1) the division of Ector County placing the City of Odessa (population 60,000) and part of the surrounding Ector County in the Sixteenth District, and the remainder of the County in the Nineteenth District;

(2) the division of Bexar County (San Antonio) into a central city core district (Twentieth), with the remainder of the County, including the suburban communities, allocated between the Twenty-first and Twenty-third Districts;

(3) the inclusion of the southwest portion of Harris County (embracing parts of Houston and its suburbs) in the Twenty-second District; and

(4) the filling out of the Sixth District with the southeast portion of Tarrant County (Ft. Worth) and southwest Dallas Country (Dallas).

But for the arguable exception of Ector County, all cutting of county lines in S.B.1 involves the highly urbanized counties. Instances (2) and (4), it may be argued, resulted from the predominant desire to protect incumbents and to favor rural over urban interests. It would thus appear that if preservation of county lines was a factor considered by the legislature, it was a factor of the lowest priority; and on the whole, cannot stand as justification for the deviations in S.B.1.

2. *Allowances for population trends were not made on a rational, systematic basis.*

This Court established in *Kirkpatrick* that so long as it is not employed as a subterfuge to evade or impinge upon the concept of equal representation for equal numbers of persons, the science of demographics has a legitimate place in the legislative function of districting.

The safeguard which assures that demographics will not be used as a subterfuge is the requirement that the demographic data be applied in a systematic, nondiscriminatory manner, on a state-wide basis. It is this requirement that must render untenable Appellant's contention (at page 71 of his brief) that such justification is a function of the ingenuity of counsel defending the legislation in a lawsuit after the fact.

Absent the advantages of hindsight, the record does not support any credible claim of justification based on allowances for population trends. See, e.g. the testimony of Representative Jones at A. 250; House

committee clerk Teague at A. 130-133; and Senate committee clerk Hooser at A. 115-117. In oral argument upon trial of the case, Appellant in fact conceded that justification was no more than a secondary argument.

Finally, it may also be suggested that whatever merit there may be to Appellant's criticism of the decennial census, its deficiencies may be adequately remedied by a systematic, non-discriminatory application of demographic data.

II

THE COURT BELOW ACTED PROPERLY IN ADOPTING FOR IMPLEMENTATION PLAN C PRESENTED BY APPELLEES.

As stated to the court below and to this Court in Appellees' opposition to Appellant's Application for Stay of Mandate, "the State of Texas has a full and rich history of malapportionment". In the past decade its Congressional apportionment has been declared unconstitutional (1966); its State House and Senate districting has been declared unconstitutional (1964 and again in 1967); after thirty years of non-reapportionment its State Board of Education districting was declared unconstitutional (1969); and its apportionment of County Commissioner Courts was declared unconstitutional (1968). In addition, its provisions for filing fees in primary elections [have] been declared unconstitutional for the second time within two years.

The Supreme Court of Texas declared the 1971 reapportionment of the State House to be unconstitutional and the subsequent reapportionment of that body and the State Senate was subsequently declared unconstitutional by a United States three

judge district court whose action Appellees understand was not "stayed" by this Court.

This "reapportionment history in the State lends some substance to [the] fears" of Appellees that the failure to adopt a constitutional plan by the court below would mean a continuous program of litigation and deferral evidenced so well by the history of seven years of litigation set forth in *Ely* v. *Klahr*, 403 U.S. 115 (1971) from which the above quote was taken. Unlike *Ely*, however, your instant Appellees did present alternative plans for reapportionment so that the court could avoid adding to Texas' rich history of elections conducted under malapportioned schemes. The court's power to reapportion when the legislative apportionment falls short of constitutional requirements is not in question and has been well settled. *Reynolds* v. *Sims*, supra; *Swann* v. *Charlotte — Mecklenburg Board of Education* 402 U.S. 1 (1972).

Appellants' now recede by a short distance from their position of accusing the court below of political motivation in adopting or becoming a tool in the adoption of a plan which implemented their own "Republican" and "liberal Democrat" philosophies and party interests. See, Appellants' Application for Stay of Mandate at page 9. Instead, this Court is urged to find that that court "fell far below" the standard of giving full and adequate deliberation and consideration to this important decision. Appellants' Brief at page 86.

Appellees' do not presume to know what occurred in chambers prior to or after hearing argument in this matter. The facts, however, give full credence to the

possibility of deliberate and concerned consideration of the selection of a constitutional plan and Appellees would presume no less from the court below, no matter what the political persuasions of the judges comprising the court (if such were determinable). Indeed, if the court below had drawn its own plan, it is interesting to speculate what misfeasance the Court would have been accused of if the States' officials were not satisfied with the court's solution.

The court below was informed at the pre-trial held on December 7, 1971 that "Plan C" was to be formulated and presented to the court and that it would be developed at the outset by the use of population equality as the primary standard coupled with the need to keep the districts as compact and contiguous as possible. On January 10, 1972 that Plan was filed and the court was informed that Plan C embodied compactness and contiguity while keeping the population disparity (high to low districts) to .28 per cent. The court was also supplied with maps having overlays depicting the various plans so that they could compare the compactness of each plan with the others. Additionally, the court had been provided with population figures for the various areas so they could readily determine the compactness and contiguousness of the districts in conjunction with their population densities to readily determine which of the plans best suited the constitutional mandate of "one man, one vote". Indeed, this Court could make the same decisions with the maps presented at pages 44B, 46B and 48B of Appellants' Jurisdictional Statement if the Court had population figures to apply.

Plan B, presented by Appellees, merely took the plan of the legislature and adjusted that plan to achieve greater equality to present to the court, in a graphic manner, what the legislature could have done if it had been disposed to make an attempt at population equality in spite of the lack of good faith evidenced in the ways in which the legislature developed its plan as set forth above. The court below in formulating or adopting a plan had before it various exhibits and evidence setting forth the deficiencies in the design of S.B.1 and inherent in Plan B.

Appellees amended complaint requested the adoption of Plan C in its prayer for relief among the alternatives requested. Appellant would now imply that Plan C was not seriously considered by Appellees inasmuch as they did not argue for its adoption during the 45 minutes permitted for argument. Appellees had Plan C before the court and presumed that it had been and would be considered and discussed. It is worthy of noting that the court after having had the opportunity to consider and compare the various plans stated in their opinion "Plan C is based solely on population and is *significantly* more compact and contiguous than either S.B.1 or Plan B." Appellants Jurisdictional Statement of page 27A. (Emphasis Added).

In light of the State of Texas' rich history of malapportionment and the courts expressed concern over the length of time which would be spent in litigation of this matter the court had no alternative but to adopt a new apportionment plan once a decision as to the unconstitutionality of the legislative enactment had been decided. The court below very carefully left the

option open for the State to reconvene its legislature for the purpose of enacting a constitutional redistricting plan at a time when the calling of a special session of the legislature was being considered by the Governor of the State for other purposes. Thus, the court gave due deference to the legislature's wishes by permitting the legislature to replace the court's plan with its own constitutional plan whenever enacted. Subsequently, the Governor of the State refused to call a session of the legislature for the purpose of enacting a constitutional redistricting plan. The current legislature, now in session for a short time, has not yet seen the introduction of any bills concerning redistricting. If the determination of the court below that S.B.1 is unconstitutional is to stand, the action of that court in conditionally imposing a plan becomes ever more appropriate in light of the continued inaction of the legislature.

Once the decision to implement a new plan was made, Plan C was the only choice for the court due to their decision that Plan C "best effectuates the principal of 'one man, one vote' enunciated by the Supreme Court." Opinion of the court below at Appellant's Jurisdictional Statement 27A.

CONCLUSION

WHEREFORE, Appellees pray that the judgment of

the trial court be in all things affirmed and that Appellees recover their costs in this behalf expended.

Respectfully submitted,

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Dallas, Texas

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MICHAEL RODAK, JR., CL

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

NO. 71-1623

BOB BULLOCK, et al,

Appellants

v.

DAN WEISER, et al,

Appellees

On Appeal from the United States District Court for the Northern District of Texas Dallas Division

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APPELLEE-INTERVENORS' BRIEF ON THE MERITS

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January, 1973

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APPELLEE-INTERVENORS' BRIEF ON THE MERITS

OPINION BELOW

The opinion and orders of the District Court for the Northern District of Texas are not yet reported. The opinion and orders are attached to Appellee-Intervenors' Brief herein as Exhibit A. The order of this Court staying the said judgment, on application by Appellant to Mr. Justice Powell, by him referred to the Court, is reported at 404 U.S. 1065, 92 S. Ct. 750 (January 27, 1972). This Court's denial of the motions of Appellees to advance and expedite and to dis-

pense with printing is reported at 405 U.S. 912, 92 S. Ct. 928 (February 22, 1972).

JURISDICTION

The Appellant has correctly stated the law applicable to this Court's having found jurisdiction of this case and Appellee-Intervenors will here omit restatement relative thereto as provided by S.Ct. Rule 40. Appellee-Intervenors, Van Henry Archer, Jr., et al, filed Motion for Extension of Time to File Brief (Ex. B) and extension of time was granted (Ex. C), and that said Intervenors' brief was timely filed.

QUESTIONS PRESENTED

1. Appellee-Intervenors, Archer, et al, do not agree with Appellant as to the Questions Presented and here state that the proper Questions Presented to the Supreme Court are as follows:

2. Whether the Plaintiffs (Appellees herein), based upon the pleadings, depositions, briefs, exhibits, stipulations and arguments, presented sufficient evidence to the Court to warrant the Court holding that Plaintiffs proved their claims as set out that the congressional districts established by S.B. 1 are not as compact, contiguous and as nearly equal in population as is practicable; and, therefore, said statute violated on its face Article 1 §2 of the United States Constitution. Thus, Plaintiffs contend that they and others similarly situated are deprived of their constitutional rights to have their vote count for as much as every other voter (A 75-76).

3. Whether the legislature, by enacting S.B. 1, did not make a good faith effort to established districts which meet the requirements of Article 1 §2 of the United States Constitution that such districts be as

compact, contiguous and as nearly equal in population as is practicable (A 75-76).

4. Whether the Defendants (Appellants herein), based upon the pleadings, depositions, briefs, stipulations and arguments, presented sufficient evidence to the Court to warrant the Court denying Plaintiffs the relief they sought and warranting the Court holding that S.B. 1 was constitutional (A 75-76).

STATUTE AND CONSTITUTIONAL PROVISION INVOLVED

The Appellant has correctly stated statutes and constitutional provisions involved and the same will hereby be omitted as provided in S. Ct. Rule 40.

STATEMENT

Appellee-Intervenors, Archer, et al, adopt by reference the Appellee, Dan Weiser, et al, Brief on the Merits insofar as said Brief applies to said Appellee-Intervenors, F.R.A.P. Rule 28 (1) 8 U.S.C.A. Appellee-Intervenors here state to the Court that the first four paragraphs of the Statement contained in Appellants' Brief on the Merits are correct.

That Plan C. the plan adopted by the Court, allowed for a population deviation of less than 3/10ths of 1% (.0028) (A 59-64), while S.B. 1 allowed a population deviation of 4.13% (A 12-19). On January 22, 1972 the Court below, in a three page opinion and order, declared S.B. 1 unconstitutional, enjoined elections under it, and adopted Plaintiffs' Plan C as "the plan of this Court for the congressional districts for the State of Texas" (Exhibit A).

The District Court's decree provided for reconsideration if the legislature devised a new plan but the Governor refused to call a special session. That a new

legislature is now in session and that the trial court retained jurisdiction for the adoption of a new plan.

This Court granted a stay of this judgment on January 27, 1972 (see 92 S.Ct. 750). That the Appellant made no request for "findings of fact". That the depositions taken in the case suggest that a primary objective of the legislators was a concern with the protection of incumbent congressmen, together with the creation of districts that would be beneficial to those state senators interested in running for congress. There was also concern over who might be elected to congress to fill vacant seats or new seats created by S.B. 1. That there was no evidence presented by the Appellant to show that the population variances existing under S.B. 1 were unavoidable nor that a good faith effort was made to achieve absolute equality, nor was justification shown for any such variances.

The record in this case amply supports the conclusion of the Court below that no good faith effort to achieve mathematical equality was made, and further that there was no attempt by the Appellant to justify each variance.

SUMMARY OF ARGUMENT

That the case of Kirkpatrick vs. Preisler, 394 U.S. 526 (1969), the authority relied upon by the Court below in their opinion and order, requires mathematical equality and "permits only the limited population variances which are unavoidable despite a good faith effort to achieve absolute equality, or for which justification is shown." (page 535).

The burden is upon the Appellant to prove justification for variances. It is noteworthy that a prior districting plan, H.B. 782, had been passed by the Texas

House of Representatives (A-288) and was defeated in the Senate. That plan had less population disparity than S.B. 1 (A-192).

Finally, it appears that the Appellant feels that the Kirkpatrick case goes too far, and is asking this Court to set aside the rule as adopted by the Kirkpatrick judgment because it does not suit Appellants' purposes and thinking. Appellant further states that the Court should have invited proposals for relief from Defendants and from the public. It is noteworthy that the State refused to submit an alternate plan but stood on S.B. 1. Defendants thereby waived their right to submit additional plans for the Court's consideration.

In summary, it appears the Appellant is dissatisfied with the judgment rendered in the Kirkpatrick case and is requesting this Court to reverse itself, or that this Court find a distinction between the present case and the Kirkpatrick case, or to determine whether or not the trial court acted improperly in adopting the plan they adopted. The fact still remains that the true criterion under the Kirkpatrick decision is that constitutional districts should be drawn, which provide equal representation for equal numbers of people permitting only the limited population variances which are unavoidable despite a good faith effort to achieve absolute equality, or for which justification is shown. The Appellant has failed to show that a good faith effort was made to achieve absolute equality and has failed to justify any such variances.

Appellee-Intervenors submit that the trial court's ruling that S.B. 1 (A-12-19) was unconstitutional, and in the Court's judgment adopting Plan C as the proper plan for congressional redistricting, and the Court's instructions in connection therewith (Exhibit A),

were correct and said Judgment and Orders should be, by this Court, affirmed.

CONCLUSION

For the reasons given, the judgment of the Court below should be sustained.

Respectfully submitted,

NATHAN W. EASON

J. DOUGLAS MCGUIRE
Attorneys for Appellee-Intervenors
400 Alamo National Building
San Antonio, Texas 78205

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DAN WEISER, ET AL.

v.

HONORABLE BOB BULLOCK,
SECRETARY OF STATE OF THE
STATE OF TEXAS

CIVIL ACTION
No. CA-3-5202-D
(Three Judge Court)

OPINION AND ORDER

Before INGRAHAM, Circuit Judge, and TAYLOR and HILL, District Judges Per Curiam: Plaintiffs attack the constitutionality of the Texas statute establishing congressional districts for the State of Texas, S.B. 1, now codified as Art. 197d, V.A.C.S. (1971). Under the provisions of secs. 2 through 25 of S.B. 1, the population of the largest legislative district established is 19,275 persons greater than that of the smallest district, producing a deviation of 4.1 percent.

In *Kirkpatrick v. Preisler*, 394 U.S. 526 (1969), the Supreme Court held that in congressional redistricting a State must "make a good-faith effort to achieve precise mathematical equality." 394 U.S. at 530. Population variances are not permissible unless the State shows either that they resulted despite such an effort or unless "the State (justifies) each variance, no matter how small." 394 U.S. at 531. The record in this case fails to show that in the enactment of S.B. 1 the Legislature of the State of Texas "came as close to equality as it might have come." 394 U.S. at 531. Nor has the State justified the variances in S.B. 1 within the principles laid down in *Kirkpatrick*. Therefore this

Court holds that S.B. 1 is unconstitutional. Accordingly, defendant is enjoined from conducting or permitting any primary or general elections based upon the districts established by S.B. 1.

Van Henry Archer, Jr., individually and as Chairman of the Bexar County Republican Party, and others, have applied to this Court for leave to intervene as plaintiffs. Leave to intervene is hereby granted to the extent stated by the attorney for intervenors in open court.

Defendant has not submitted any plan of reapportionment as an alternative to S.B. 1. Plaintiffs have proposed two plans, B and C. Plan B is based on S.B. 1, but has significantly lower deviation than S.B. 1. Plan C is based solely on population and is significantly more compact and contiguous than either S.B. 1 or Plan B. The population deviation in Plan C is less than 3/10 of one percent (.0028). The Court has considered Plans B and C, as well as the plan submitted by the intervening plaintiffs, and concludes that Plan C best effectuates the principle of "one-man, one vote" enunciated by the Supreme Court.

It is therefore ORDERED that Plan C, as set forth in detail in Exhibit A attached hereto and made a part hereof, be and it is hereby adopted as the plan of this Court for the congressional districts of the State of Texas and said plan is hereby declared to be in effect and operative immediately upon the signing of this Opinion and Order as establishing the Congressional Districts of the State of Texas.

This Order is entered without prejudice to the legislative and executive branches of the State of Texas to proceed with the consideration and adoption of any other constitutionally permissible plan of congressional

redistricting at a called or regular session of the Legislature of the State of Texas. This Court retains jurisdiction of this cause for the purposes of considering any such plan which might be adopted by the Legislature of the State of Texas until congressional reapportionment is enacted based on the Twentieth Decennial Census to be conducted in 1980.

The deadline in Texas for the filing by candidates for Congress of the United States is February 7, 1972. This Court also retains jurisdiction for the purpose of extending the filing deadline for candidates in congressional districts in the event it is made known to this Court that a called session of the Legislature will include congressional reapportionment.

Plaintiffs sue on behalf themselves and all other qualified voters, registered and unregistered, within the several districts wherein the respective plaintiffs reside as well as all other qualified voters in all other congressional districts in the State of Texas. The Order entered herein is determinative of the rights all others regarding congressional redistricting. Proceeding herein with this clause as a class action is not only unnecessary but creates problems with reference to notice and the rights of other individual members of the class. Maintenance of this cause as a class action is hereby denied.

Copies of this judgment and order will be forwarded to all attorneys of record, the Governor of the State of Texas, the Lieutenant Governor of the State of Texas, the Speaker of the House of Representatives of the State of Texas, the Secretary of State of the State of Texas, and the Attorney General of the State of Texas.

It is further ORDERED that this judgment be considered, for purposes of appeal and otherwise, as a

final judgment in this case, and that no stay of proceedings pending appeal will be granted by this Court.

Dated at Dallas, Texas this . . . . day of January, 1972.

United States Circuit Judge

United States District Judge

United States District Judge

DISTRICT 1 is composed of Bowie, Camp, Cass, Delta, Fannin, Franklin, Grayson, Harrison, Hopkins, Lamar, Marion, Morris, Rains, Red River, Rockwall, Titus, Upshur and Wood Counties; and all of Hunt County not included in the Celeste census county division.

DISTRICT 2 is composed of Angelina, Brazos, Grimes, Hardin, Houston, Jasper, Liberty, Madison, Montgomery, Newton, Orange, Polk, Robertson, Sabine, San Augustine, San Jacinto, Trinity, Tyler, and Walker Counties; and that part of Leon County included in the Centerville and Oakwood census county divisions.

DISTRICT 3 is composed of that part of the city of Richardson in the Plano census county division of Collin County, and that part of Dallas County included in census tracts 1, 2.01, 2.02, 3, 6.01, 6.02, 7.02, 9, 10, 11.01, 11.02, 12, 14, 71.01, 72, 73.01, 73.02, 74, 75.01, 75.02, 76.01, 76.02, 76.03, 76.04, 77, 78.01, 78.02, 78.03, 79.01, 79.02, 80, 81, 82, 94, 95, 96.01, 96.02, 96.03, 96.04, 97, 98, 99, 128, 129, 130.01, 130.02, 131, 132, 133, 134.01, 134.02, 135, 136.01, 136.02, 136.03, 137.01, 137.02, 137.03, 137.04, 137.05, 138.01, 138.02, 139, 140.01, 140.02, 141.01, 141.02, 141.03, 141.04, 142, 143, 144, 145, 146, 147, 185.02, 190.02, 190.03, 190.04, 191, 192.01, 192.02, 192.03, 192.04, 192.05, 192.06, 192.07, 193.01, 193.02, 194, 195.01, 195.02, 196, 197 and 198.

DISTRICT 4 is composed of Anderson, Cherokee, Freestone, Gregg, Henderson, Kaufman, Nacogdoches, Navarro, Panola, Rusk, Shelby, Smith and Van Zandt Counties; and that part of Leon County not included in District 2.

DISTRICT 5 is composed of that part of Dallas County not included in District 3 or 24.

DISTRICT 6 is composed of Hood and Johnson Counties; and that part of Tarrant County included in census tracts 13, 14.01, 14.03, 16, 19, 23.01, 23.02, 24.01, 24.02, 25, 26, 28, 29, 30, 31, 32, 33, 34, 36.01, 36.02, 37.01, 37.02, 38, 39, 40, 41, 42.01, 42.02, 43, 44, 45.01, 45.02, 45.03, 46.01, 46.02, 46.03, 46.04, 46.05, 47, 48.01, 48.02, 51, 52, 53, 54.01, 54.02, 55.01, 55.02, 55.03, 55.04, 56, 57.01, 57.02, 58, 59, 60.01, 60.02, 60.03, 61.01, 61.02, 62, 63, 64, 65.01, 65.02, 65.03, 65.04, 65.05, 108.01, 108.02, 108.03, 109, 110.01, 110.02, 111.01, 111.02, 112.01, 112.02, 113, 114, 115.01, 115.02, 115.03, 115.04, 130, 131, 216.01, 216.02, 216.03, 217.01, 217.02, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228 and 229.

DISTRICT 7 is composed of that part of Harris County included in census tracts 558, 557, 554, 553, 552, 556, 555, 551, 545, 550, 549, 548, 542, 546, 544, 537, 538, 541, 540, 452, 451, 543, 542, 529, 528, 527, 526, 519, 517, 443, 442, 441, 444, 447, 448, 450, 449, 446, 445, 440, 421, 406, 420, 422, 439, 438, 437, 436, 423, 419, 424, 435, 407, 409, 408, 411, 418, 417, 416, 425, 426, 434, 429, 428, 427, 433, 431, 432, 333, 413, 334, 536, and 430; and that part of census tract 405 included in census block group 5.

DISTRICT 8 is composed of that part of Harris County included in census tracts 559, 244, 245, 243, 242, 535, 241, 533, 240, 223, 531, 532, 222, 221, 224, 525, 524, 523, 522, 220, 218, 225, 217, 216, 215, 227, 521, 229, 228, 230, 214, 203, 209, 213, 231, 212, 202, 210, 211, 232, 233, 321, 320, 322, 350, 351, 352, 354, 234, 262, 261, 267, 268, 263, 265, 266, 270, 269, 271, 264, 361, 362, 273, 274, 272, 275, 364, 360, 363, 365,

530, 539, 534, 254 and 353.

DISTRICT 9 is composed of Chambers, Galveston and Jefferson Counties and that part of Harris County included in census tracts 250, 249, 247, 238, 251, 248, 246, 252, 253, 237, 236, 256, 255, 257, 258, 235, 259, 260, 226 and 239.

DISTRICT 10 is composed of Austin, Bastrop, Blanco, Caldwell, Fayette, Hays, Travis, and Washington Counties; that part of Guadalupe County included in the Seguin East, Seguin North, and Seguin Southwest census county divisions; that part of Lavaca County included in the Moulton and Shiner census county divisions; all of Waller County not included in the Brookshire census county division; all of Colorado County not included in the Garwood census county division; and all of Gonzales not included in the Nixon census county division.

DISTRICT 11 is composed of Bell, Bosque, Burleson, Burnett, Coryell, Falls, Hamilton, Lampasas, Lee, Limestone, McLennan, Milam, Mills, Somervell and Williamson Counties; that part of Brown County included in the Brookesmith census county division; and that part of San Saba County included in the San Saba North census county division.

DISTRICT 12 is composed of Cooke and Denton Counties; that part of Collin County not included in District 3, that part of Tarrant County not included in District 6, and that part of Hunt County not included in District 1.

DISTRICT 13 is composed of Armstrong, Bailey, Briscoe, Carson, Castro, Childress, Collingworth, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Floyd, Foard, Gray, Hale, Hall, Hansford, Hardeman,

Hartley, Hemphill, Hutchinson, Kent, King, Lamb, Lipscomb, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Stonewall, Swisher and Wheeler Counties; that part of Knox County not included in District 17, that part of Haskell County not included in District 17, and that part of Hockley County not included in District 19.

DISTRICT 14 is composed of Aransas, Calhoun, Jackson, Matagorda, Nueces, Refugio, San Patricio, Victoria and Wharton Counties; that part of Colorado County not included in District 10; and that part of Lavaca County not included in District 10.

DISTRICT 15 is composed of Brooks, Cameron, Duval, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kleberg, Live Oak, McMullen, Starr, Willacy, and Zapata Counties; that part of Bee County included in the Pettus-Pawnee census county division; and that part of Karnes County included in the Kenedy census county division.

DISTRICT 16 is composed of Brewster, Crane, Culberson, El Paso, Hudspeth, Jeff Davis, Loving, Pecos, Presidio, Reeves, Terrell, Val Verde, Ward, and Winkler Counties.

DISTRICT 17 is composed of Archer, Baylor, Callahan, Clay, Comanche, Eastland, Erath, Jack, Jones, Montague, Palo Pinto, Parker, Shackelford, Stephens, Taylor, Throckmorton, Wichita, Wilbarger, Wise and Young Counties; that part of Haskell County included in the Hasket and Weinert census county divisions, and that part of Knox County included in the Goree census county division.

DISTRICT 18 is composed of that part of Harris County not included in District 7 or 8 or 9 or 22.

DISTRICT 19 is composed of Andrews, Borden, Cochran, Dawson, Ector, Gaines, Garza, Howard, Lubbock, Lynn, Martin, Midland, Terry, Upton and Yoakum Counties; and that part of Hockley County included in the Ropesville census county division.

DISTRICT 20 is composed of that part of Bexar County included in census tracts 1106, 1107, 1203, 1204, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1218, 1219, 1601, 1604, 1605, 1606, 1607, 1614, 1615, 1616, 1617, 1618, 1619, 1701, 1702, 1703, 1704, 1705, 1706, 1707, 1708, 1709, 1710, 1711, 1712, 1713, 1714, 1715, 1716, 1717, 1718, 1719, 1720, 1801 1802, 1803, 1804, 1805, 1806, 1807, 1808, 1809, 1810, 1811, 1812, 1813, 1814, 1815, 1816, 1817, 1818, 1819, 1820, 1821, 1901, 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916 and 1917.

DISTRICT 21 is composed of Bandera, Coke, Coleman, Comal, Concho, Crockett, Dimmit, Edwards, Fisher, Frio, Gillespie, Glasscock, Irion, Kendall, Kerr, Kimble, Kinney, LaSalle, Llano, Mason, Maverick, McCulloch, Medina, Menard, Mitchell, Nolan, Reagan, Real, Runnels, Schleicher, Scurry, Sterling, Sutton, Tom Green, Uvalde, Webb and Zavala Counties; that part of Brown County not included in District 11, that part of San Saba County not included in District 11 and that part of Atascosa County not included in District 12.

DISTRICT 22 is composed of Brazoria and Fort Bend Counties; that part of Waller County not included in District 10; and that part of Harris County included in census tracts 412, 414, 415, 331, 332, 329, 366, 339, 340, 335, 338, 336, 337, 341, 343, 342, 319, 325, 326, 324, 410, 355, 356, 349, 357, 358, 348, 359, 347, 346, 345, 370, 367, 369, 368, 373, 374, 371, 372, 375, 327, 323 and 344.

DISTRICT 23 is composed of Dewitt, Goliad and Wilson Counties; that part of Bee County not included in District 15; that part of Karnes County not included in District 15; that part of Guadalupe County not included in District 10; that part of Atascosa County included in the Poteet census county division; that part of Gonzales County not included in District 10; and that part of Bexar County not included in District 20.

DISTRICT 24 is composed of Ellis and Hill Counties and that part of Dallas County included in census tracts 4.01, 4.02, 4.03, 5, 7.01, 20, 41, 42, 43, 44, 45, 46, 47, 48, 50, 51, 52, 53, 54, 56, 57, 59.01, 59.02, 60.01, 60.02, 61, 62, 63.01, 63.02, 64, 65, 67, 68, 69, 71.02, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111.01, 111.02, 112, 113, 148, 149, 150, 151, 152, 153.01, 153.02, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165.01, 165.02, 165.03, 165.04, 165.05, 166.01, 166.02, 166.03, 166.04, 167.01, 167.02, 168, 169.01, 169.02, 169.03, 169.04 and 199.

EXHIBIT B

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1972

No. 72-147

BOB BULLOCK, ET AL

Appellants,

v.

DIANA REGESTER, ET AL

Appellees.

On Appeal From the United States District Court For the Western District of Texas

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MOTION OF VAN HENRY ARCHER, JR., ET AL FOR EXTENSION OF TIME FOR FILING BRIEF

Comes now the Intervenors, Plaintiffs below, VAN HENRY ARCHER, JR., et al, and pursuant to the provisions of Rule 34, move for a thirty (30) day extension for the filing of their Brief in this cause for the following reasons:

1. This is a multi-faceted reapportionment case involving a number of parties and a multitude of contentions. The complexity of the case is evidenced by the opinion of the Court below which consists of sixty-three (63) printed pages in the Appendix to the Jurisdictional Statement.

2. The record in this case is voluminous, consisting of several thousand pages of testimony, depositions and hearings and well over one hundred exhibits. Inasmuch as the parties have deferred printing of the Appendix, the record is not readily accessible. Also, counsel has been further handicapped due to his illness and the illness of his stenographer which has made it impossible to secure the services of a knowledgeable stenographer familiar with preparation of appellate briefs to complete the transcription of said brief and have same printed and filed by December 30, 1972.

3. Because of the bulk of the record, the complexity of the issues and finally the intervention of the holiday season, and its inevitable interruption of routine, as well as the illness of counsel and staff, counsel cannot adequately prepare and file its brief within the allotted time.

In consideration of the foregoing, counsel respectfully requests an extension of thirty (30) days, until February 2, 1973, within which to prepare and file its brief, and in this connection represents to the Court that Appellants have indicated that they have no objection to the extension.

Respectfully submitted,

NATHAN W. EASON

J. DOUGLAS MCGUIRE
Counsel for Van Henry Archer, Jr., et al
400 Alamo National Building
San Antonio, Texas 78205

This is to certify that a true and correct copy of the foregoing Motion has been served by Certified Mail upon all counsel of record.

.....

J. Douglas McGuire

EXHIBIT C

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

January 2, 1973

J. Douglas McGuire, Esq.
400 Alamo National Building
San Antonio, Texas 78205

Re: Bullock, et al. v. Regester, et al.
No. 72-147, and
Bullock v. Weiser, No. 71-1623

Dear Mr. McGuire:

Receipt is acknowledged of your letters of December 26, 1972, together with applications for an extension of time for filing the brief of appellees Van Henry Archer, Jr., et al., in the above-entitled cases for a period of 30 days. You are informed that on December 20, 1972, appellees were granted an extension of time to and including January 17, 1973. I am hereby extending your time to and including January 24, 1973. No further extension will be granted by this office since the cases will be argued before the Court during the two-week session in February.

Very truly yours,

Michael Rodak, Jr.
Clerk

FILE COPY

FEB 20 1

MICHAEL RODAK, JR.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

NO. 71-1628

BOB BULLOCK, etc.,

Appellant

v.

DAN WEISER, et al.,

Appellees

On Appeal from the United States District Court
for the Northern District of Texas
Dallas Division

APPELLANT'S REPLY BRIEF

JOHN L. HILL
Attorney General of Texas
JOHN M. BARRON
First Assistant Attorney
General
CHARLES L. BLACK, JR.
169 Bishop Street
New Haven, Connecticut 06511

February 1973

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

NO. 71-1623

BOB BULLOCK, etc.,

Appellant

v.

DAN WEISER, et al.,

Appellees

On Appeal from the United States District Court
for the Northern District of Texas
Dallas Division

APPELLANT'S REPLY BRIEF

INTRODUCTORY

Appellees' Brief does not seem to confront the arguments supporting appellant's contention-in-chief (Appellant's Brief, Point I); appellant simply stands by these, without more. It is believed that economy of time on oral argument can be effected by short reply to a few specific points as to other matter in Appellees' Brief. Point numeration here will follow that of their Brief.

I-A-1 (pp. 10 ff.)

There has never been doubt of the Legislature's in-

tention to avoid pairing incumbent Congressmen where possible. Appellant, if called on to do so, would defend this intent as entirely proper — especially where, as here, party and ideological bias are affirmatively and uncontradictedly shown not to have existed. (See Appellant's Brief, p. 72; as to this point, moreover, it is more than ironical that the two incumbents defeated in 1972 under this Democratic Legislature's plan were Democrats, Appellees' Brief, pp. 13-14). But this defense is unnecessary, for there is no showing (and no concrete or distinct claim) of any causal connection between this intent (or any other intent concerning "protection of incumbency") with any of the small population variances which are now returned to as "the premise upon which appellees' suit depends" (Appellees' Brief, p. 9). Appellees' Plan B, as appellees have admitted or even proclaimed (see Appellant's Brief on the Merits, p. 73) attains practically the same incumbency-related ends as S.B.1, except that county lines are freely cut, and population variance is thereby reduced virtually to zero. Even if the Legislative motive, under its most pejorative name (that of "incumbency protection") were bad, mere bad motivation, from which no constitutionally forbidden consequences are shown causally to flow, cannot ground a constitutional claim. It still remains a puzzle how appellees, having put forward and strongly advocated their Plan B, can now assail the constituency-representative effect which that Plan, like S.B.1, by their own account embodied.

(It is regrettable that appellees have introduced (Appellees' Brief, p. 14) what surely is not intended by them, but might be taken, as a suggestion of an instance of racial bias in S.B.1, in connection with the placing of ten black Oak Cliff precincts (with the rest

of Oak Cliff) in the 24th District, instead of the 5th. This subject having been raised, appellant has no alternative to making the following points:

(1) Reverend Holmes' opinion, tendered only as such (A. 152), that this placement significantly diluted Black strength seems quite improbable, in view of the fact that the 24th as constituted now contains some 90,000 "Negroes" (the census term) while the 5th contains some 80,000. (U.S. Bureau of the Census, *Congressional District Data, Texas*, April 1972, pp. 8, 10) No firmer data on this are in the Record, or known to appellant.

(2) Senator Mauzy, the friendliest witness called by appellees, whose testimony is cited by them in this very connection, and who voted against S.B.1 on other grounds (A. 302) testified that he thought, for what seem quite plausible, non-racial reasons, that it "made sense" to place these precincts in the 24th. (A. 280)

(3) There is no evidence of racial motivation in this placement. There is no hint of racism elsewhere in this Record.

(4) No hint of any racial issue appears in the Pre-trial Order summarizing plaintiff's claims.

(5) With great reluctance, appellant must now mention that the one clear racially-oriented feature of S.B.1 is its creation of a Houston District (the 18th) from which it was anticipated that a Black would be elected—as indeed occurred. (See, e.g., A. 103, 155, 188) There was nothing wrong with this action, given the demography of Harris County, but its being taken without contest quite clears the sponsors of S.B.1 of racial bias, especially in view of the last sentence in (3) just above.

On the whole, appellees' counsel summed the whole thing up just right in the one and only utterance on

this subject in either oral or written argument in the court below: "That is correct, Your Honor, this is not a race case." (A. 317)

I-A-2 and 3 (pp. 15-19)

These Points together deal with the House Plan, rejection of which is pointed to by appellees as evidence of legislative "bad faith". (That plan had 2.5% variation up and down, therein differing by 1.6% from S.B.1. This Record does not show how the two Bills compared as to *average* deviation, which is only .745% in S.B.1.)

The striking thing here is that this House Plan, with palpable variations, and itself surrounded with the very same motives that appellees stigmatize as improper in regard to S.B.1, would, if their views are right, itself be unconstitutional. Does not one enter a world of paradox, remote from common sense and practical politics, when the Legislature's rejection of one plan, itself beyond doubt invalid if appellees are right, is put forward by them as grounds for the Court's rejecting another?

As to this and to all other points made so far, mention should now be made of appellees' disclaimer of any desire to interest "this Court in the minutiae of Texas politics". (Appellees' Brief, p. 14) The truth is that just and supportable judgment, case by case, on the permissibility of small variations such as are shown in this case (either in S.B.1 or as to that bill's minuscule difference from the House bill), *must* rest on painstaking scrutiny of the minutiae of politics; Procrustean arbitariness is the alternative. The allowance of some reasonable general leeway (which appellant contends is mandated by substantive law; Appellant's Brief, Point I) is the only non-arbitrary alternative to

this unsuitable scrutiny. If the good faith of a Legislature is to be impugned for minute and fine-grained reasons, then those reasons must be minutely examined in the fine grain. (Specifically, the reasons for rejecting this House bill were multiple, and are only partly known (A. 291))

I-A-4 (p. 18)

As to the "leeways" projected by some legislators (p. 18), it should first be noted that any such beliefs running over 5% up and down were on any calculation a kind of subjective *injuria sine damno*, since the total up and down variation in S.B.1 is only 4.1%. The argument from these imaginations of or beliefs in a slight leeway (on the part of people some of whom were not lawyers and most if not all of whom were not constitutional experts) is, moreover, not relevant over the whole range of controverted ground, for if this Court agrees either with appellant's contention (Appellant's Brief, Point I) that reasonable general leeway is allowed by substantive constitutional law, or with his contention that respect for county lines justifies these small variations (*ib.*, Point II-B), then these beliefs will have been correct. In any case, such belief in small leeways in no way evidences that resolute bad faith, tending in a specific substantive direction, found as a fact in *Kirkpatrick*, as fully developed in Appellant's Brief, in its Point II-A, at pp. 66 ff.

A practically-oriented layman's opinion on a point of law, not clear even to law reviews (See Appellant's Brief, p. 68) is in no common sense of the word "bad faith" at all.

I-B-1 (pp. 19-22)

This important section is replete with misinterpre-

tations on the county-line issue; indeed, it consists entirely of these.

It is true (Appellees' Brief, p. 20) that there is no "instance where the deviation *in a particular district* under S.B.1 can be attributed . . . to preservation of county lines" [Emphasis supplied.] How could there be, except in the truistic sense (which cannot be appellees' meaning) that population variance between any two contiguous districts could always be reduced by splitting any county on the border between them? But appellees themselves, in their own Plan B, have furnished a complete demonstration that the *whole set* of small variations in S.B.1 can be explained *entirely* by "preservation of county lines." (See Appellant's Brief at pp. 73 ff.)

It is not shown, nor is it other than the exact opposite of true, that "county lines were cut [in S.B.1] when it was expedient to do so". Appellant is content to accept the issues tendered by appellees' own four examples, presumably well-chosen (Appellees' Brief, p. 20):

> (1) Ector County was cut (not around but through Odessa) because, as a mere glance at a county-population map will show, any other course would have produced a District going out from El Paso about 450-500 miles, through sparsely populated counties.
>
> (2) Appellees seem to be saying here that Districts 21 and 23 "fleshed out" rural population with urban population. (p. 20) The 21st is 75.6% "urban", and about 60% "metropolitan"; the 23rd is 69.4% "urban" and about 52% "metropolitan". U.S. Bureau of the Census, *Congressional District Data, Texas*, April, 1972, p. 10. Is comment necessary?

(3) The 22d groups part of Houston, some Houston suburbs, Fort Bend County, and a part of Brazoria County. Since the latter two counties as a whole have only about 160,000 people, in part urban, it is impossible that urban population could here be "fleshing out" rural. Something, after all, had to be done about the fact that the population of Harris County is not evenly divisible by 466,530 —an arithmetical condition which no constitutional doctrine can call into being.

(4) The 6th District, likewise, ended up heavily "urban" and "metropolitan". U.S. Bureau of the Census, *Congressional District Data, Texas*, p. 8.

In all four instances, if anything is being "fleshed out", it is the urban population that is being "fleshed out" with the rural, to the submergence of the latter. (It must be added, in view of appellees' astonishing statements on the "fleshing out" of dominantly rural districts with urban population, that *every District* to form which county lines were cut or a county divided in S.B.1—viz., the 3rd, 4th, 5th, 6th, 7th, 8th, 12th, 16th, 18th, 19th, 22d, 23d and 24th—is dominantly to totally "urban" and "metropolitan", ib., pp. 8-10.)

But something like this was inevitable. Appellees correctly say, as though it were a *charge*, that, except for Ector County (already explained) "all cutting of county lines in S.B.1 involves the highly urbanized counties." Of course it does, because those counties, with far more people than it takes to make one District, or in some cases two or three Districts, and lacking the nearly miraculous accident of remainderless divisibility by 466,530, *had* to be cut. In other words (except for Ector County, cut to avoid a District of absurd geographical size), S.B.1, even by appellees own account, cut county lines only when it strictly had

to. This is true as to *every one* of the above enumerated Districts, except the two involving Ector County. This totally disposes of appellees' claim (Appellees' Brief, p. 21) that county integrity was "a factor of the lowest priority . . ." Even more significantly, the figures just given, on appellees' own examples, makes quite disturbing appellees' suggestions (Appellees' Brief, pp. 20 and 21) that the necessary line-cutting was so performed as to depotentiate the urban vote, and their flat assertion (*ib.*, p. 3) that "county lines were freely cut when necessary to flesh out a predominantly rural district with urban population."

It only remains to note that appellees have, even at this penultimate moment, brought forward nothing that could even suggest that the county-line defense here is a sham, as it clearly was, and was found to be, in *Kirkpatrick* (see Appellant's Brief, Point II-B). The lightest probing of their discussion of this subject makes the very contrary absolutely certain, as just shown.

CONCLUSION

Other points seem to need no reply. Standing by all his former contentions, appellant renews his prayer that the judgment of the court below be reversed.

Respectfully submitted,

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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

WHITE, SECRETARY OF STATE OF TEXAS *v.* WEISER ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

No. 71-1623. Argued February 26, 1973—Decided June 18, 1973

Texas enacted Senate Bill One (S. B. 1) providing for congressional redistricting. The State was divided into 24 districts, with an average deviation from the ideal district of .745%, and a maximum deviation of 2.43% above and 1.7% below the ideal. Appellees alleged that the reapportionment violated their rights under Art. 1, § 2, and submitted Plan B, which, although cutting across more county lines, generally followed the district lines of S. B. 1. Plan B had a total maximum deviation of .159%. Shortly before the three-judge court hearing, appellees submitted, alternatively, Plan C. That scheme, with a total maximum deviation of .284%, substantially disregarded the configuration of the districts in S. B. 1, using population as the only consideration. The District Court found S. B. 1 unconstitutional and ordered the adoption of Plan C, as being more compact and contiguous than the other plans. *Held:*

1. Although the percentage deviations in S. B. 1 are smaller than those invalidated in *Kirkpatrick* v. *Preisler*, 394 U. S. 526, and *Wells* v. *Rockefeller*, 394 U. S. 542, they were not "unavoidable" and the districts were not as mathematically equal as reasonably possible. The argument that variances are justified if they necessarily result from the State's attempt to avoid fragmenting political subdivisions by drawing district lines along existing political subdivision lines is not legally acceptable. *Kirkpatrick*, *supra*, at 533–534. Pp. 6–7.

2. Though the drawing of district boundaries in a way that minimizes the number of contests between present incumbents does not of itself establish invidiousness, *Burns* v. *Richardson*, 384 U. S. 73, 89 n. 16, it is not necessary to decide whether such state

Syllabus

interest will justify the deviations in S. B. 1, since Plan B serves this purpose as well with less population variance. Pp. 8–9.

3. Population variances do invidiously devalue the individual's vote at some point or level in size, and this is especially noticeable in congressional districts with their substantial populations. Pp. 9–10.

4. Plan B, to a greater extent than Plan C, while eliminating population variances, adhered to the districting preferences of the state legislature, which has "primary jurisdiction" over legislative reapportionment. Pp. 10–14.

Affirmed in part, reversed in part, and remanded.

WHITE, J., delivered the opinion of the Court, in Part I of which all Members joined and in Part II of which BURGER, C. J., and DOUGLAS, BRENNAN, STEWART, BLACKMUN, POWELL, and REHNQUIST, JJ., joined. POWELL, J., filed a concurring opinion, in which BURGER, C. J., and REHNQUIST, J., joined. MARSHALL, J., filed an opinion concurring in part in Part II.

NOTICE · This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 71–1623

Mark White, Jr., Etc., Appellant, *v.* Dan Weiser et al.	On Appeal from the United States District Court for the Northern District of Texas.

[June 18, 1973]

MR. JUSTICE WHITE delivered the opinion of the Court.

This case concerns the congressional reapportionment of the State of Texas.

On June 17, 1971, the Governor of the State of Texas signed into law Senate Bill One (S. B. 1). Tex. Acts, 62d Leg., 1st C. S., c. 12, p. 38, providing for the congressional redistricting of the State. S. B. 1 divided the State into 24 congressional districts for the ensuing decennium.[1] Based upon 1970 census figures, absolute population equality among the 24 districts would mean a population of 466,530 in each district. The districts created by S. B. 1 varied from a high of 477,856 in the 13th District to a low of 458,581 in the 15th District. The 13th District exceeded the ideal district by 2.43% and the 15th District was smaller by 1.7%. The population difference between the two districts was 19,275 persons, and their total percentage deviation was 4.1%. The ratio of the 13th District to the 15th was 1.04 to 1.

[1] Prior to the passage of S. B. 1, the Texas Senate had twice defeated redistricting bills, passed by the House, with total deviations smaller than the total deviation in S. B. 1.

The average deviation of all districts from the ideal district of 466,530 was .745% or 3,421 persons.[2]

On October 19, 1971, appellees, residents of the Sixth, 13th, 16th, and 19th congressional districts, filed suit in the United States District Court for the Northern District of Texas against appellant, the Secretary of State of Texas, and the chief election officer of the State. Appellees alleged that the reapportionment of the Texas congressional seats as embodied in S. B. 1 violated their rights under Art. I, § 2, and the Equal Protection Clause

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[2] The redistricting of the 24 Texas congressional districts under S. B. 1 follows:

District	Population	Absolute Variance from Ideal	2% Variance from Ideal
1	461,870	− 4,651	1.00
2	466,836	+ 306	.01
3	465,221	− 1,309	.28
4	463,142	− 3,388	.73
5	465,093	− 1,437	.31
6	467,913	+ 1,383	.30
7	461,704	− 4,826	1.03
8	461,216	− 5,314	1.14
9	467,483	+ 953	.20
10	465,493	− 1,037	.22
11	468,148	+ 1,618	.35
12	465,671	− 859	.18
13	477,856	+11,326	2.43
14	467,839	+ 1,309	.28
15	458,581	− 7,949	1.70
16	477,614	+11,084	2.38
17	467,912	+ 1,382	.30
18	462,062	− 4,468	.96
19	477,459	+10,929	2.34
20	467,942	+ 1,412	.30
21	466,656	+ 126	.03
22	461,448	− 5,082	1.09
23	466,248	− 282	.06
24	465,315	− 1,216	.26

of the Fourteenth Amendment.[3] They requested an injunction against the use of S. B. 1, an order requiring a new apportionment or the use of a plan submitted with their complaint, or at-large elections. The plan appended to appellees' original complaint, which came to be called Plan B, generally followed the redistricting pattern of S. B. 1. However, the district lines were adjusted where necessary so as to achieve smaller population variances among districts. Plan B created districts varying from 466,930 to 466,234, for a total absolute deviation between the largest and smallest district of 696 persons. District 12 was overrepresented by .086% and District Four underrepresented by .063%, for a total percentage deviation of .159%. Although the plan followed the district lines of S. B. 1 where possible, in order to achieve maximum population equality, Plan B cut across 18 more county lines than did S. B. 1.[4]

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[3] At a subsequent pretrial conference, the Fourteenth Amendment claims were eliminated.

[4] Plan B resulted in the following districting:

District	Population	Absolute Variance from Ideal
1	466,545	+ 15
2	466,565	+ 35
3	466,266	−264
4	466,234	−296
5	466,620	+ 90
6	466,285	−245
7	466,335	−194
8	466,704	+174
9	466,678	+148
10	466,313	−217
11	466,258	−272
12	466,930	+400
13	466,663	+133
14	466,437	− 93
15	466,359	−171

[*Footnote 4 continued on p. 4*]

A three-judge court was convened. 28 U. S. C. §§ 2281, 2284. On January 10, 1972, several days prior to the scheduled hearing of the case, appellees filed an amended complaint suggesting an alternative plan, which came to be called Plan C. Plan C, unlike Plan B, substantially disregarded the configuration of the districts in S. B. 1. Instead, as the authors of the plan frankly admitted and the District Court found, Plan C represented an attempt to attain lower deviations without regard to any consideration other than population. The districts in Plan C varied in population from 467,173 as a high to 465,855 as a low, a difference of 1,323 persons. The largest district was overpopulated by .139%, and the smallest underpopulated by .145%, the total percentage deviation being .284%. Plan C had 14 districts with greater deviations than Plan B, eight districts with deviations equal to those found in Plan B, and two districts with deviations smaller than those in Plan B.[5]

District	Population	Absolute Variance from Ideal
16	466,663	+133
17	466,432	− 98
18	466,520	− 10
19	466,649	+119
20	466,514	− 16
21	466,753	+223
22	466,707	+177
23	466,424	−106
24	466,875	+345

[5] Plan C resulted in the following districts:

District	Population	Absolute Variance from Ideal
1	465,986	−544
2	466,817	+287
3	466,835	+305
4	467,108	+578
5	466,258	−272
6	467,023	+493
7	466,336	−194

[*Footnote 5 continued on p. 5*]

On January 21, 1972, the District Court heard argument and received into evidence various depositions. The next day, the court announced its decision. Relying upon this Court's decision in *Kirkpatrick* v. *Preisler*, 394 U. S. 526 (1969), the District Court declared S. B. 1 unconstitutional and enjoined appellant from "conducting or permitting any primary or general elections based upon the districts established by S. B. 1." The District Court ordered the adoption of Plan C as "the plan of this Court for the congressional districts of the State of Texas."[6] Noting that its order was entered "without

District	Population	Absolute Variance from Ideal
8	466,704	+174
9	466,678	+148
10	466,303	−227
11	466,569	+ 39
12	466,926	+396
13	467,173	+648
14	466,437	− 93
15	466,359	−171
16	465,941	−589
17	466,340	−190
18	466,520	− 10
19	466,154	−376
20	466,654	+124
21	466,875	+345
22	466,707	+177
23	466,167	−363
24	465,855	−675

[6]The District Court's entire discussion of its reasons for selecting Plan C follows:

"Defendant has not submitted any plan of reapportionment as an alternative to S. B. 1. Plaintiffs have proposed two plans, B and C. Plan B is based on S. B. 1, but has significantly lower deviation than S. B. 1. Plan C is based solely on population and is significantly more compact and contiguous than either S. B. 1 or Plan B. . . . The Court has considered Plans B and C, as well as the plan submitted by the intervening plaintiffs, and concludes that Plan C best effectuates the principle of 'one man, one vote' enunciated by the Supreme Court."

prejudice to the legislative and executive branches of the State of Texas to proceed with the consideration and adoption of any other constitutionally permissible plan of congressional redistricting at a called or regular session of the Legislature," the District Court retained jurisdiction "for the purposes of considering any such plan which might be adopted by the Legislature of the State of Texas until congressional reapportionment is enacted based on the Twentieth Decennial Census to be conducted in 1980."[7]

This Court, on application of appellant, granted a stay of the order of the District Court. 404 U. S. 1065 (1972). The 1972 congressional elections were therefore conducted under the plan embodied in S. B. 1. We noted probable jurisdiction of the appeal. 409 U. S. 947 (1972).

I

The command of Art. I, § 2, that representatives be chosen "by the People of the several States" was elucidated in *Wesberry* v. *Sanders*, 376 U. S. 1 (1964), and in *Kirkpatrick* v. *Preisler*, 394 U. S. 526, 527–528 (1969), to permit only those population variances among congressional districts that "are unavoidable despite a good-faith effort to achieve absolute equality, or for which justifica-

[7] The District Court's order also granted leave to intervene to Van Henry Archer, Chairman of the Bexar County Republican Party, and others. The intervenors, appellees in this Court, filed a suggested reapportionment plan with their complaint-in-intervention which was rejected by the District Court and is not pressed here. The District Court also retained jurisdiction for the purpose of extending the impending February 7, 1972 filing date for congressional candidates "in the event it is made known to [the District] Court that a called session of the Legislature will include congressional reapportionment." However, the Governor refused to call a special session of the legislature.

tion is shown." *Id.*, at 531.[8] See also *Wells* v. *Rockefeller*, 394 U. S. 542, 546 (1969). *Kirkpatrick* and *Wells* invalidated state reapportionment statutes providing for federal congressional districts having total percentage deviations of 5.97% and 13.1%, respectively. In both cases, we concluded that the deviations did not demonstrate a good-faith effort to achieve absolute equality and were not sufficiently justified.

The percentage deviations now before us in S. B. 1 are smaller than those invalidated in *Kirkpatrick* and *Wells*, but we agree with the District Court that, under the standards of those cases, they were not "unavoidable," and the districts were not as mathematically equal as reasonably possible. Both Plans B and C demonstrate this much, and the State does not really dispute it.[9] Also, as in *Kirkpatrick* and *Wells*, "we do not find legally acceptable the argument that variances are justified if they necessarily result from a State's attempt to avoid fragmenting political subdivisions by drawing congressional district lines along existing county, municipal, or other political subdivision line boundaries." *Kirkpatrick* v. *Preisler*, *supra*, at 533–534.

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[8] *Kirkpatrick* v. *Preisler* "reject[ed] Missouri's argument that there is a fixed numerical or percentage population variance small enough to be considered *de minimis* and to satisfy without question the 'as nearly as practicable' standard." 394 U. S., at 530. We concluded, "Unless population variances among congressional districts are shown to have resulted despite such [good-faith] effort, the State must justify each variance, no matter how small." *Id.*, at 531.

[9] Prior to the passage of S. B. 1, the Texas House twice passed a congressional reapportionment bill with lower deviations. Each bill had a total deviation of 2.5%. Although both bills were ultimately defeated in the Senate, their passage by the House, and indeed their very existence, indicates that it was possible and practicable to construct a redistricting scheme with lower population deviations among districts than those embodied in S. B. 1.

The State asserts that the variances present in S. B. 1 nevertheless represent good-faith efforts by the State to promote "constituency-representative relations," [10] a policy frankly aimed at maintaining existing relationships between incumbent congressmen and their constituents and preserving the seniority the members of the State's delegation have achieved in the United States House of Representatives. We do not disparage this interest. We have, in the context of state reapportionment, said that the fact that "district boundaries may have been drawn in a way that minimizes the number of contests between present incumbents does not in and of itself establish invidiousness." *Burns* v. *Richardson*, 384 U. S. 73, 89 n. 16 (1966). Cf. *Gaffney* v. *Cummings*, *ante*, p. —. But we need not decide whether this state interest is sufficient to justify the deviations at issue here, for Plan B admittedly serves this purpose as well as S. B. 1 while adhering more closely to population equality.[11] S. B. 1 and its population variations, there-

[10] "Appellant earnestly submits that the term 'constituency-representative relations' is the more accurate term; indeed it is very hard to see why those who are so concerned about representation should stigmatize as a mere euphemism a term which brings in both parties to the representational relationship . . . . (The assumptions seem to be that while a Congressman may like his job, no constituency can like its Congressman, or care whether he continues to represent it or not—and that no Congressman can possibly learn to know his constituency well enough to serve it better than he can serve another constituency selected for him by, it may be, a young mathematician in Dallas.) Under either name, appellant would defend this motive as entirely proper, if the burden of defense fell upon him on the facts herein." Brief for Appellant, p. 72.

[11] It appears that the two plans passed by the House and defeated by the Senate may also have fostered this goal while achieving lower population variances.

fore, were not necessary to achieve the asserted state goal, and the District Court was correct in rejecting it.[12]

Appellees also straightforwardly argue that *Kirkpatrick* and *Wells* should be modified so as not to require the "small" population variances among congressional districts involved in this case to be justified by the State. S. B. 1, it is urged, absent proof of invidiousness over and above the population variances among its districts, does not violate Art. 1, § 2. It is clear, however, that at some point or level in size, population variances *do* import invidious devaluation of the individual's vote and represent a failure to accord him fair and effective representation. Appellant concedes this and

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[12] Appellant contends that the authors of S. B. 1, and the legislature in passing on the plan, took into account projected population shifts among the districts. Remembering that the congressional districting plan will be in effect for at least 10 years and five congressional elections, the appellant argues that the legislature might properly consider population changes in devising a redistricting plan. In *Kirkpatrick* v. *Preisler*, we recognized that "[w]here these shifts can be predicted with a high degree of accuracy, States that are redistricting may properly consider them." 394 U. S., at 535. We were, however, careful to note:

"By this we mean to open no avenue for subterfuge. Findings as to population trends must be thoroughly documented and applied throughout the State in a systematic, not an *ad hoc* manner." *Ibid.*

In the present case, we conclude that Texas' attempt to justify the deviations found in S. B. 1 falls far short of this standard. The record is barren, with the exception of scattered and vague assertions in deposition testimony, of adequate documentation of the projected population shifts and firm evidence that the alleged shifts were in fact relied upon.

There is also some suggestion that passage of S. B. 1 was preceded by a dispute as to who would fill the Second District congressional seat. The State does not urge this alleged goal as a justification for the deviations in S. B. 1, nor can we tell from this record whether S. B. 1 in fact resolved this dispute.

would locate the line differently than the Court did in *Kirkpatrick* and *Wells*. Keeping in mind that congressional districts are not so intertwined and freighted with strictly local interests as are state legislative districts and that, as compared with the latter, they are relatively enormous, with each percentage point of variation representing almost 5,000 people, we are not inclined to disturb *Kirkpatrick* and *Wells*. This is particularly so in light of *Mahan* v. *Howell*, 410 U. S. (1973), decided earlier this Term, where we reiterated that the *Wesberry*, *Kirkpatrick*, and *Wells* line of cases would continue to govern congressional reapportionments, although holding that the rigor of the rule of those cases was inappropriate for state reapportionments challenged under the Equal Protection Clause of the Fourteenth Amendment.

II

The District Court properly rejected S. B. 1, but it had before it both Plan B and Plan C, and there remains the question whether the court correctly chose to implement the latter.[13] Plan B adhered to the basic district configurations found in S. B. 1, but adjusted the district lines, where necessary, in order to achieve maximum population equality among districts. Each district in Plan B contained generally the same counties as the equivalent district in S. B. 1.[14] Plan C, on the other hand, was based entirely upon population considerations

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[13] The court had before it a plan submitted by the plaintiffs-intervenors and, possibly, other plans. Only Plan B and Plan C appear to have been seriously urged by the parties and considered by the court, and only those plans are defended before this Court.

[14] "Plan B, presented by Appellees, merely took the plan of the legislature and adjusted that plan to achieve greater equality to present to the court, in a graphic manner, what the legislature could have done if it had been disposed to make an attempt at population equality . . . ." Brief for Appellees, p. 25.

and made no attempt to adhere to the district configurations found in S. B. 1.[15] Both plans were submitted to the District Court by appellees. After deciding that S. B. 1 was unacceptable, the District Court ordered the implementation of Plan C. In announcing its decision, the court said only:

> "Plan C is based solely on population and is significantly more compact and contiguous than either S. B. 1 or Plan B. . . . The Court has considered Plans B and C . . . and concludes that Plan C best effectuates the principle of "one man, one vote" enunciated by the Supreme Court."

Appellant argues that, even if the District Court properly struck down S. B. 1, it should have selected Plan B rather than Plan C. Appellees defend the selection of Plan C as an exercise of the remedial discretion of the District Court, although in doing so they argue against a plan that they proposed and frequently urged upon the District Court.

From the beginning, we have recognized that "reapportionment is primarily a matter for legislative consideration and determination, and that judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites

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[15] Appellees' amended complaint explained Plan C, as follows:

"That had the legislature desired to enact a statute consonant with the mandate of Article I, § 2 of the U. S. Constitution, that is a plan which made each district as compact and contiguous and as nearly equal in population to each other district as practicable, taking into account solely population and not taking into account 'social,' 'cultural,' 'economic' or 'other factors' including preservation of incumbent congressman, it could have enacted a plan the same as or substantially similar to that plan set forth in Exhibit C annexed hereto and herewith incorporated by reference as though set forth at length herein. That such plan is hereinafter referred to as 'Plan C.'"

in a timely fashion after having had an adequate opportunity to do so." *Reynolds* v. *Sims*, 377 U. S., at 586. See also, *id.*, at 584, 586–587; *id.*, at 588–589 (opinion of STEWART, J.). We have adhered to the view that state legislatures have "primary jurisdiction" over legislative reapportionment. See *Maryland Committee for Fair Representation* v. *Tawes*, 377 U. S. 656, 676 (1964); *Davis* v. *Mann*, 377 U. S. 678, 693 (1964); *Roman* v. *Sincock*, 377 U. S. 695, 709–710, 711–712 (1964); *Burns* v. *Richardson*, 384 U. S. 73, 84–85 (1966); *Ely* v. *Klahr*, 403 U. S. 108, 114 (1971); *Whitcomb* v. *Chavis*, 403 U. S. 124, 160–161 (1971); *Sixty-Seventh Minnesota State Senate* v. *Beens*, 406 U. S. 187, 195–201 (1972); *Mahan* v. *Howell*, 410 U. S. —, — (1973). Just as a federal district court, in the context of legislative reapportionment, should follow the policies and preferences of the State, as expressed in statutory and constitutional provisions or in the reapportionment plans proposed by the state legislature, whenever adherence to state policy does not detract from the requirements of the Federal Constitution, we hold that a district court should similarly honor state policies in the context of congressional reapportionment. In fashioning a reapportionment plan or in choosing among plans, a district court should not pre-empt the legislative task nor "intrude upon state policy any more than necessary." *Whitcomb* v. *Chavis*, 403 U. S., at 160.

Here, it is clear that Plan B, to a greater extent than did Plan C, adhered to the desires of the state legislature while attempting to achieve population equality among districts. S. B. 1, a properly enacted statute of the State of Texas, established the State's 24 congressional districts with locations and configurations found appropriate by the duly elected members of the two houses of the Texas Legislature. As we have often noted, reapportionment is a complicated process. Districting

inevitably has sharp political impact and inevitably political decisions must be made by those charged with the task. See *Gaffney* v. *Cummings*, *ante*, p. —. Here those decisions were made by the legislature in pursuit of what were deemed important state interests. Its decisions should not be unnecessarily put aside in the course of fashioning relief appropriate to remedy what were held to be impermissible population variations between congressional districts.

Plan B, as all parties concede, represented an attempt to adhere to the districting preferences of the state legislature while eliminating population variances. Indeed, Plan B achieved the goal of population equality to a greater extent than did Plan C. Despite the existence of Plan B, the District Court ordered implementation of Plan C, which, as conceded by all parties, ignored legislative districting policy and constructed districts solely on the basis of population considerations. The District Court erred in this choice. Given the alternatives, the court should not have imposed Plan C, with its very different political impact, on the State. It should have implemented Plan B, which most clearly approximated the reapportionment plan of the state legislature, while satisfying constitutional requirements. The court said only that Plan C is "significantly more compact and contiguous" than Plan B. But both Plan B and Plan C feature contiguous districts, and, even if the districts in Plan C can be called more compact, the District Court's preferences do not override whatever state goals were embodied in S. B. 1 and, derivatively, in Plan B. "The remedial powers of an equity court must be adequate to the task, but they are not unlimited. Here the District Court erred in so broadly brushing aside state apportionment policy without solid constitutional or equitable grounds for doing so." *Whitcomb* v. *Chavis*, 403 U. S., at 161. If there was a good reason for adopt-

ing Plan C rather than Plan B, the District Court failed to state it.

Of course, the District Court should defer to state policy in fashioning relief only where that policy is consistent with constitutional norms and is not itself vulnerable to legal challenge. The District Court should not, in the name of state policy, refrain from providing remedies fully adequate to redress constitutional violations which have been adjudicated and must be rectified. But here, the District Court did not suggest or hold that the legislative policy of districting so as to preserve the constituencies of congressional incumbents was unconstitutional or even undesirable. We repeat what we have said in the context of the legislative reapportionment; "The fact that district boundaries may have been drawn in a way that minimizes the number of contests between present incumbents does not in and of itself establish invidiousness." *Burns* v. *Richardson*, 384 U. S. 73, 89 n. 16 (1966). Cf. *Gaffney* v. *Cummings*, *ante*, p. —; *Taylor* v. *McKeithen*, 407 U. S. 191 (1972). And we note that appellees themselves submitted Plan B to the District Court and defended it on the basis that it adhered to state goals, as embodied in S. B. 1, while eliminating impermissible deviations.[16]

The judgment of the District Court invalidating S. B. 1 is affirmed. The adoption of Plan C is, however, reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

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[16] S. B. 1 is conceded also to have sought adherence to county lines. While Plan B admittedly cuts more county lines than does Plan C, it also achieves lower deviations. Because both Plan B and Plan C were required to fracture more political boundaries than did S. B. 1, in order to achieve population equality among districts, appellant does not contend that Plan B is unacceptable because of more cutting of county lines.

SUPREME COURT OF THE UNITED STATES

No. 71-1623

Mark White, Jr., Etc., Appellant,
v.
Dan Weiser et al.

On Appeal from the United States District Court for the Northern District of Texas.

[June 18, 1973]

MR. JUSTICE POWELL, with whom THE CHIEF JUSTICE and MR. JUSTICE REHNQUIST join, concurring.

Had I been a member of the Court when *Kirkpatrick* v. *Preisler*, 394 U. S. 526 (1969), and *Wells* v. *Rockefeller*, 394 U. S. 542 (1969), were decided, I would not have thought that the Constitution—a vital and living charter after nearly two centuries because of the wise flexibility of its key provisions—could be read to require a rule of mathematical exactitude in legislative reapportionment. Moreover, the dissenting opinions of Justices Harlan* and WHITE and the concurring opinion of Justice Fortas in those cases demonstrated well that the exactitude required by the majority displayed a serious misunderstanding of the practicalities of the legislative and reapportioning processes. Nothing has transpired since *Kirkpatrick* and *Wells* to reflect adversely on the soundness, as I view it, of the dissenting perceptions. Indeed, the Court's recent opinions in *Mahan* v. *Howell*, — U. S. —, *Gaffney* v. *Cummings*, *ante*, p. —, and *Bullock* v. *Regester*, *ante*, p. —, strengthen the case against attempting to hold any reapportionment scheme—State or congressional—to slide-rule precision. These more recent cases have allowed modest variations from theo-

*MR. JUSTICE STEWART joined Justice Harlan's opinion.

retical "exactitude" in recognition of the impracticality of applying the *Kirkpatrick* rule as well as in deference to legitimate state interests.

However all of this may be, *Kirkpatrick* is virtually indistinguishable from this case, and unless and until the Court decides to reconsider that decision, I will follow it. Accordingly, I join the Court's opinion.

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MR. JUSTICE MARSHALL, concurring in part.

While I join Part I of the Court's opinion, I can agree with Part II wherein the Court reverses the District Court's selection of Plan C over Plan B only insofar as that determination rests upon the fact that Plan B comes closer than Plan C to achieving the goal of "precise mathematical equality," see *Kirkpatrick* v. *Preisler*, 394 U. S. 526, 530–531 (1969). See also *Wells* v. *Rockefellar*, 394 U. S. 542 (1969). Whatever the merits of the view that a legislature's reapportionment plan will not be struck down merely because "district boundaries may have been drawn in a way that minimizes the number of contests between incumbents," *Burns* v. *Richardson*, 384 U. S. 73, 89 n. 16 (1966), it is entirely another matter to suggest that a federal district court which has determined that a particular reapportionment plan fails to comport with the constitutional requirement of "one man, one vote" must, in drafting and adopting its own remedial plan, give consideration to the apparent desires of the controlling state political powers. In my opinion, the judicial remedial process in the reapportionment area—as in any area—should be a fastidiously neutral and objective one, free of all political considerations and guided only by the controlling constitutional principle of strict accuracy in representative apportionment. Here the Dis-

trict Court gave ample recognition to the legislature's "primary responsibility"* in the area of apportionment when it added that its redistricting order was "without prejudice to the legislative and executive branches of the State of Texas to proceed with the consideration and adoption of any constitutionally permissible plan of congressional redistricting at a called or regular session of the Legislature of the State of Texas." Nevertheless, because the District Court failed to adhere strictly to the principle of mathematical precision in selecting between Plan B and Plan C, its choice of Plan C must be reversed.

*See, *e. g.*, *Maryland Committee for Fair Representation* v. *Tawes*, 377 U. S. 656, 676 (1964); *Ely* v. *Klahr*, 403 U. S. 108, 114 (1971); *Burns* v. *Richardson*, 384 U. S. 73, 84–85 (1966).